

NOTICES OF FINAL RULEMAKING

The Administrative Procedure Act requires the publication of the final rules of the state's agencies. Final rules are those which have appeared in the *Register* first as proposed rules and have been through the formal rulemaking process including approval by the Governor's Regulatory Review Council or the Attorney General. The Secretary of State shall publish the notice along with the Preamble and the full text in the next available issue of the *Register* after the final rules have been submitted for filing and publication.

NOTICE OF FINAL RULEMAKING

TITLE 9. HEALTH SERVICES

CHAPTER 22. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM (AHCCCS) ADMINISTRATION

PREAMBLE

1. Sections Affected

R9-22-1101	Amend
R9-22-1102	Repeal
R9-22-1102	New Section
R9-22-1103	Repeal
R9-22-1103	New Section
R9-22-1104	Repeal
R9-22-1104	New Section
R9-22-1105	New Section
R9-22-1106	New Section
R9-22-1108	New Section
R9-22-1109	New Section
R9-22-1110	New Section
R9-22-1111	New Section
R9-22-1112	New Section

Rulemaking Action

2. The statutory authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):

Authorizing statutes: A.R.S. §§ 36-2905.04, 36-2918, 36-2957, 36-2991, 36-2912, 36-2993

Implementing statutes: A.R.S. §§ 36-2991, 36-2903.01, 36-2932, 36-2986

3. The effective date of the rules:

September 11, 2004

4. A list of all previous notices appearing in the Register addressing the final rule:

Notice of Rulemaking Docket Opening: 9 A.A.R. 2118, June 27, 2003

Notice of Proposed Rulemaking: 10 A.A.R. 1069, March 26, 2004

5. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:

Name: Linda Barry
Address: AHCCCS
Office of Legal Assistance
701 E. Jefferson, Mail Drop 6200
Phoenix, AZ 85034
Telephone: (602) 417-4484
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6. An explanation of the rule, including the agency's reasons for initiating the rule:

AHCCCS is amending 9 A.A.C. 22, Article 11 to provide additional clarity, specificity, and conciseness to existing rule language and to comply with the five-year review report made in January 2003.

7. A reference to any study relevant to the rule that the agency reviewed and either relied on in its evaluation of or justification for the rule or did not rely on in its evaluation of or justification for the rule, where the public may

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obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:

No studies were reviewed.

8. A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:

Not applicable

9. The summary of the economic, small business, and consumer impact:

These rules describe the process and circumstances under which AHCCCS imposes a penalty, assessment, or a penalty and assessment on a provider or non-contracting provider. The rules also include the provider or non-contracting provider's right to file a request for a State Fair Hearing. It is anticipated that contractors, providers, non-contracting providers, and AHCCCS will be nominally impacted by the changes to the rule language. AHCCCS anticipates that these rules will benefit contractors, providers, non-contracting providers and AHCCCS by more clearly describing the process, circumstances, and timelines under which a penalty, assessment, or penalty and assessment are determined, including more clearly describing the process used by a provider or non-contracting provider to request a State Fair Hearing.

It is anticipated that consumers, members, and the private sector, including small businesses and political subdivisions will not be impacted since the proposed rule language is intended to streamline and clarify the existing rules and process, which relate only to providers and non-contracting providers.

10. A description of the changes between the proposed rules, including supplemental notices, and final rules (if applicable):

R9-22-1105(1)(g)	<u>Amended R9-22-1105 (1)(g)</u> AHCCCS will modify the rule language to increase the amount claimed that constitutes an aggravating circumstance from "\$1000 or greater" to "\$5,000 or greater." (See item 11, number 2)
R9-22-1106	AHCCCS struck the word "reference" and amended the language. (See question 11, number 5)
R9-22-1106	AHCCCS struck the word "summary" and amended the language. (See item 11, number 6)
R9-22-1107	AHCCCS has stricken the language "To accept the penalty, assessment, or penalty and assessment, the provider or non-contracting provider shall file a written acceptance with AHCCCS within 60 days from the date of receipt of the Notice of Intent." AHCCCS has reserved section R9-22-1107.
R9-22-1108	AHCCCS has stricken the following language: 1. <u>To accept a counter proposal, the provider or non-contracting provider shall file a written acceptance with AHCCCS within 30 days from the date of the Notice of Compromise Decision.</u> 3. <u>If the provider or non-contracting provider does not respond to AHCCCS' counter proposal within 30 days from the date of the receipt of the Notice of Compromise Decision, the counter proposal is upheld.</u> AHCCCS has renumbered the items under R9-22-1108(B).
R9-22-1108 and R9-22-1109	AHCCCS added language "date of receipt." (See item 11, number 12)

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R9-22-1110	AHCCCS has stricken the following language: <u>B. If the provider or non-contracting provider did not receive a timely Notice of Compromise Decision or failed to receive a written Notice of Compromise Decision from AHCCCS and the provider or non-contracting provider wishes to request a State Fair Hearing, the provider or non-contracting provider shall file a written request for a State Fair Hearing within 30 days after the last date for the timely mailing of the Notice of Compromise Decision.</u> AHCCCS restructured the items under R9-22-1110.
R9-22-1111	AHCCCS added language “any aggravating circumstances under R9-22-1105.” (See item 11, number 11)
R9-22-1112	A new section was added to clarify that AHCCCS may withdraw the Notice of Intent at any time. (See item 11, number 9)
General	AHCCCS made the rules more clear, concise, and understandable by making grammatical and structural changes throughout the rules.
General	The agency made minor technical changes at the suggestion of the Governor’s Regulatory Review Council staff.

11. A summary of the comments made regarding the rule and the agency response to them:

Number	Comment	Recommendation
1.	Request that the definition of “claim” and “claimed” be clarified and restricted to the AHCCCS reimbursement amount. The word claimed is “ambiguous.” Gammage & Burnham on behalf of numerous Arizona hospitals and physicians	<u>No change.</u> A.R.S. § 36-2918 references a “claim for payment”. “Claim” is defined in R9-22-1101 and makes clear that claim refers to the provider’s request for payment, rather than the amount actually reimbursed. AHCCCS believes this is consistent with statute.
2.	It is inappropriate and arbitrary for the regulations to require to aggravation of a penalty based on a single or few instances of alleged improper conduct for one group of providers and not others due solely to the nature of the service or specialty. The \$1,000 threshold for aggravating is totally inappropriate. Gammage & Burnham	<u>Amended R9-22-1105 (1)(g)</u> A.R.S. § 36-2918 (B) references a single “claim” for a medical service in computing penalties. However to accommodate this concern and because a single hospital claim is often over the \$1,000 limit, AHCCCS will modify language to increase the aggravating circumstances to “\$5,000 or greater.”
3.	Inconsistent treatment of providers for purposes of aggravation is inherent in the wording of the proposed regulations. To qualify for mitigation, the circumstances of the alleged offense must meet all of the five criteria listed in R9-22-1104 (1)(a-e). For purposes of aggravation, however, the penalty must be aggravated if any of the seven criteria listed in R9-22-1105 (1) (a-g) are met. Thus, it is harder for a provider to achieve mitigation of penalties than it is for AHCCCS to impose aggravation of penalties. This structural difference demonstrates a clear lack of balance in the regulations that favors the agency. Gammage & Burnham	<u>Agree.</u> Changed “and” to “or” in R9-22-1104 (1)(d) to clarify that any of the listed factors qualify for mitigation.

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4.	Under ordinary rules of regulatory construction, the catch-all for permitting mitigation “as justice requires” at R9-22-1104 (4) cannot be applied once the agency is legally required to aggravate the penalty under R9-22-1105 (1)(g), because to do so would void the requirement for aggravation. Gammage & Burnham	<u>No change.</u> AHCCCS disagrees with this interpretation. Language for both aggravating and mitigating requires AHCCCS to “consider the following”... There is no formula or specific consequence for any of the circumstances. Therefore, the rules do not prohibit AHCCCS from considering the interest of justice under R9-22-1104 (4) even if R9-22-1105 (1)(g) applies.
5.	Under R9-22-1106, the Administration is not required to disclose the specific factual or legal basis for its conclusion that civil monetary penalties are appropriate. Instead the agency is merely providing a “summary” of the reasons for imposing the penalty without supporting data. Gammage & Burnham	Agree. In R9-22-1106, struck the word “reference” and amended the language to clarify that AHCCCS will disclose the factual and legal basis for the penalty.
6.	The agency is not required to completely divulge the purported legal basis for the allegations. The <u>specific</u> basis for an allegation of program violation is frequently the agency’s conclusion that the provider has failed to comply with Medicare billing requirements or other procedures or guidelines that AHCCCS considers legally binding. Gammage & Burnham	Agree. In R9-22-1106, struck the word “summary” and amended the language.
7.	When considering a “compromise,” the provider must file a response to the allegations within 30 days of receipt of the Notice of Intent even though the information AHCCCS has given the provider with the Notice is incomplete, superficial, and likely one-sided. The Administration has assiduously avoided placing itself under any regulatory obligation to inform the provider of the specific laws or policies that he has allegedly violated or disclose the claims data or statistical analysis that underlie its conclusions, while requiring the provider to explain why the unidentified claims do not violate the unidentified law or policies. The proposed regulations virtually ensure the provider will be unable to construct a persuasive argument on his own behalf or precipitate meaningful discussions with the agency. Gammage & Burnham	No Change As noted above, AHCCCS has amended the rules to disclose the factual and legal basis for the penalty. In order to determine whether a penalty or assessment exists, AHCCCS has evaluated claims data obtained from the provider. Based on the detailed information received from the provider, AHCCCS determines if an assessment or penalty is warranted. AHCCCS believes it would be unduly burdensome and costly to send the exact data, received from the provider, back to the provider. If additional information is received from anyone else, AHCCCS will provide the provider with that information.

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8.	The compromise process described at R9-22-1108 should be modified to separate the initial Request for Compromise from the provider's response to the allegations. Under this approach, the provider would have 30 days to notify AHCCCS that it wishes to compromise. This notice to AHCCCS would trigger an automatic obligation on AHCCCS to produce all claims or other information that form the basis for the Administration's conclusion that CMPs should be imposed. Gammage & Burnham	Agree. AHCCCS uses information received directly from the provider to form the basis that a CMP should be imposed, we again believe that it is unduly burdensome to send the detailed information back to the provider. However, in section R9-22-1110 (A) AHCCCS has increased the days in which to request a hearing from 30 to 60 to make the timeline consistent with the time-frames that are described in R9-22-1108. The Administration believes that a provider should file an appeal or request a compromise within the allotted time-frames. Furthermore, if the provider or non-contracting provider does not file an appeal or request for compromise, the original penalty, assessment, or penalty and assessment shall be upheld.
9.	Nowhere among the options that AHCCCS grants itself for responding to a Request for Compromise under R9-22-1108(B) is the option of withdrawing its Notice of Intent. Gammage & Burnham	Agree. A new rule (R9-22-1112) will be added to clarify that AHCCCS may withdraw the Notice of Intent at any time.
10.	First, the draft does not clearly advise a provider that he may be waiving his right to a hearing and further administrative process if he does not act. Equally important, having written AHCCCS once without response, the provider should not be required to send a second letter to preserve his rights. In the face of agency inaction, and to reduce hyper-technical bars to the full opportunity to be heard, the provider's response should be deemed a timely request for hearing without the need for further action by the provider. Gammage & Burnham	Disagree. AHCCCS believes that a provider act affirmatively, for example, the request needs to be made within the allotted time-frames. AHCCCS has clarified the language in section R9-22-1110.
11.	AHCCCS should have the burden of proof on all aggravating circumstances. Gammage & Burnham	Agree. In R9-22-1111, AHCCCS added language "any aggravating circumstances under R9-22-1105."
12.	Throughout rules change time-frames to begin after provider or non-contracting provider receives the Notice of Intent or other response. Gammage & Burnham	Agree. In R9-22-1108 and R9-22-1109, AHCCCS added language "date of receipt."

12. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:

Not applicable

13. Incorporations by reference and their location in the rules:

None

14. Was this rule previously adopted as an emergency rule?

No

15. The full text of the rules follows:

TITLE 9. HEALTH SERVICES

**CHAPTER 22. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM (AHCCCS)
ADMINISTRATION**

ARTICLE 11. CIVIL MONETARY PENALTIES AND ASSESSMENTS

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Section

R9-22-1101.	Basis for Civil Monetary Penalties and Assessments for Fraudulent Claims; <u>Definitions</u>
R9-22-1102.	<u>Determinations Regarding the Amount of the Penalty and Assessment</u> <u>Determining the Amount of a Penalty</u>
R9-22-1103.	<u>Notice of Proposed Determination and Rights of Parties</u> <u>Determining the Amount of an Assessment</u>
R9-22-1104.	<u>Issues and Burden of Proof</u> <u>Mitigating Circumstances</u>
R9-22-1105.	<u>Aggravating Circumstances</u>
R9-22-1106.	<u>Notice of Intent</u>
R9-22-1108.	<u>Request for a Compromise</u>
R9-22-1109.	<u>Failure to Respond to the Notice of Intent</u>
R9-22-1110.	<u>Request for State Fair Hearing</u>
R9-22-1111.	<u>Issues and Burden of Proof</u>
R9-22-1112.	<u>Withdrawal and Continuances</u>

ARTICLE 11. CIVIL MONETARY PENALTIES AND ASSESSMENTS

R9-22-1101. Basis for Civil Monetary Penalties and Assessments for Fraudulent Claims; Definitions

- A.** Circumstances for imposing a penalty and assessment. The Director or designee shall impose a penalty and assessment under the circumstances described in A.R.S. § 36-2918. For the purposes of this Article, the term “reason to know” means that a person, with respect to information, acts in deliberate ignorance of the truth or falsity of the information or with reckless disregard of the truth or falsity of the information. No proof of specific intent to defraud is required.
- B.** Violation of agreement. The Director’s or designee’s determination of whether a person knew or had reason to know that each claim or request for payment was claimed in violation of an agreement with Arizona, the Administration, or a contractor may be based on the terms of the agreement.
- A.** Scope. This Article applies to a provider or non-contracting provider who meets the conditions under this Article and who submits a claim under Medicaid (Title XIX of the Social Security Act), KidsCare (Title XXI of the Social Security Act), or the Health Care Group (A.R.S. § 36-2912).
- B.** Purpose. This Article describes the circumstances AHCCCS considers and the process that AHCCCS uses to determine the amount of a penalty, assessment, or penalty and assessment as required under A.R.S. § 36-2918. This Article includes the process and time-frames used by a provider or non-contracting provider to request a State Fair Hearing.
- C.** Definitions. The following definitions apply to this Article:
1. “Assessment” means a monetary amount that does not exceed twice the dollar amount claimed by the provider or non-contracting provider for each service.
 2. “Claim” means a request for payment submitted by a provider or non-contracted provider for payment for a service or line item of service.
 3. “Day” means calendar day unless otherwise specified.
 4. “File” means the date that AHCCCS receives a written acceptance, request for compromise, request for a counter proposal, or a request for a State Fair Hearing as established by a date stamp on the written document or other record of receipt.
 5. “Penalty” means a monetary amount, based on the number of items of service claimed, that does not exceed two thousand dollars times the number of line items of service.
 6. “Reason to know” or “had reason to know” means that a provider or non-contracting provider, acts in deliberate ignorance of the truth or falsity of, or with reckless disregard of the truth or falsity of information. No proof of specific intent to defraud is required.

R9-22-1102. ~~Determinations Regarding the Amount of the Penalty and Assessment~~ Determining the Amount of a Penalty

- A.** Factors for determining a penalty and assessment. The Director or designee shall take into account the following factors in determining the amount of a penalty and assessment:
1. The nature of each claim or request for payment and the circumstances under which it is presented or caused to be presented;
 2. The degree of culpability of a person who presents or causes to present each claim or request for payment;
 3. The history of prior offenses of a person who presents or causes to present each claim or request for payment;
 4. The financial condition of a person who presents or causes to present each claim or request for payment;
 5. The effect on patient care resulting from the failure to provide medically necessary care by a person who presents or causes to present each claim or request for payment; and
 6. Other matters as justice may require.
- B.** Types of claim circumstances. In determining the amount of a penalty and assessment, the Director or designee shall consider both mitigating circumstances and aggravating circumstances surrounding the presentation or cause for presentation of each claim or request for payment.
- C.** Mitigating circumstance guidelines. The Director or designee shall consider the following mitigating circumstance guidelines when determining the amount of a penalty and assessment:

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1. ~~Nature and circumstances of each claim or request for payment. The nature and circumstances of each claim or request for payment and the circumstances under which it is presented or is caused to be presented are a mitigating circumstance if:~~
 - a. ~~All the items and services subject to a penalty and assessment are of the same type;~~
 - b. ~~All the items and services subject to a penalty and assessment occurred within a short period of time;~~
 - c. ~~There are few items and services, and~~
 - d. ~~The total amount claimed for the items and services is less than \$1,000;~~
2. ~~Degree of culpability. The degree of culpability of a person who presents or causes to present a claim or request for payment is a mitigating circumstance if:~~
 - a. ~~Each item or service is the result of an unintentional and unrecognized error in the process the person followed in presenting or in causing to present the item or service;~~
 - b. ~~Corrective steps were taken promptly after the error was discovered, and~~
 - c. ~~A fraud and abuse control plan was adopted and operating effectively at the time each claim or request for payment was presented or caused to be presented;~~
3. ~~Financial condition. The financial condition of a person who presents or causes to present a claim or request for payment is a mitigating circumstance if the imposition of a penalty and assessment without reduction will jeopardize the ability of the person to continue as a health care provider. The resources available to the person may be considered when determining the amount of the penalty and assessment; or~~
4. ~~Other matters as justice may require. Other circumstances of a mitigating nature will be taken into account if, in the interest of justice, the circumstances require a reduction of the penalty and assessment.~~
- D.** Aggravating circumstance guidelines. The Director or designee shall consider the following aggravating circumstance guidelines when determining the amount of a penalty and assessment:
 1. ~~Nature and circumstances of each claim or request for payment. The nature and circumstances of each claim or request for payment and the circumstances under which it is presented or caused to be presented are an aggravating circumstance if:~~
 - a. ~~The items and services subject to a penalty and assessment are of several types;~~
 - b. ~~The items and services subject to a penalty and assessment occurred over a lengthy period of time;~~
 - c. ~~There are many items or services (or the nature and circumstances indicate a pattern of claims for the items or services); or~~
 - d. ~~The total amount claimed for the items and services is \$1,000 or greater;~~
 2. ~~Degree of culpability. The degree of culpability of a person who presents or causes to present each claim or request for payment is an aggravating circumstance if:~~
 - a. ~~The person knew that each item or service was not provided as claimed;~~
 - b. ~~The person knew that no payment could be made because the person had been excluded from System reimbursement; or~~
 - c. ~~Payment would violate the terms of an agreement between the person and Arizona, the Administration, or a contractor;~~
 3. ~~Prior offenses. The prior offenses of a person who presents or causes to present each claim or request for payment is an aggravating circumstance if, at any time before the presentation of any claim or request for payment subject to a penalty and assessment under this Article, the person was held liable for a criminal, civil, or administrative sanction in connection with:~~
 - a. ~~A Medicaid program;~~
 - b. ~~A Medicare program; or~~
 - c. ~~Any other public or private program of reimbursement for medical services;~~
 4. ~~Effect on patient care. The seriousness of an adverse effect that resulted, or could have resulted, from the failure of a person who presents or causes to present a claim or request for payment to provide medically necessary care is an aggravating circumstance; or~~
 5. ~~Other matters as justice may require. Other circumstances of a aggravating nature will be taken into account if, in the interest of justice, the circumstances require an increase of the penalty and assessment.~~
- E.** Amount of Penalty and Assessment. The aggregate amount of a penalty and assessment shall never be less than double the approximate amount of damages sustained by Arizona, the Administration, or contractor, unless there are extraordinary mitigating circumstances.
- F.** Compromise. The Director or designee may compromise a penalty and assessment using the guidelines in subsections (C) and (D).
- A.** AHCCCS shall determine the amount of a penalty according to A.R.S. §36-2918 (B) and (C), R9-22-1104, and R9-22-1105.
- B.** AHCCCS shall include in the amount of the penalty the cost for conducting the following:
 1. An investigation.
 2. Audit, or

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3. Inquiry.

R9-22-1103. Notice of Proposed Determination and Rights of Parties Determining the Amount of an Assessment

- A.** Administration's Responsibilities. If the Director or designee proposes to impose a penalty and assessment, the Director or designee shall deliver or send by certified mail, return receipt requested, to a person, written notice of intent to impose a penalty and assessment. The notice shall include:
1. Reference to the statutory basis for the penalty and assessment;
 2. A description of each claim or request for payment for which the penalty and assessment are proposed;
 3. The reason why each claim or request for payment subjects the person to a penalty and assessment; and
 4. The amount of the proposed penalty and assessment.
- B.** Individual's Responsibilities. A person may submit within 35 days from the date of the notice of intent to impose a penalty and assessment:
1. A written statement accepting imposition of the penalty and assessment;
 2. A written request for a compromise of the penalty and assessment stating any reasons that the person contends should result in a reduction or modification of the penalty and assessment. If a request is submitted, the time period for filing an appeal and request for hearing according to subsection (C) shall be tolled until the Director's or designee's decision on the request for compromise; or
 3. A grievance in accordance with the provider grievance provision in Article 8 of this Chapter.
- C.** The Director or designee may impose a proposed penalty and assessment or any less severe penalty and assessment if a person does not request a hearing within the time prescribed by subsections (B)(2) or (B)(3). A person has no right to appeal a penalty and assessment if the person has not timely requested a hearing.
- A.** AHCCCS shall determine the amount of an assessment according to A.R.S. § 36-2918 (B) and (C), A.A.C. R9-22-1104, and R9-22-1105.
- B.** AHCCCS shall include in the amount of the assessment the cost incurred by AHCCCS for conducting the following:
1. An investigation.
 2. Audit, or
 3. Inquiry.

R9-22-1104. Issues and Burden of Proof Mitigating Circumstances

- A.** Preponderance of Evidence. In any hearing conducted according to this Article, the Director or designee shall prove by a preponderance of the evidence that a person who requested a hearing presented or caused to be presented each claim or request for payment in violation of R9-22-1101. A person who requests a hearing shall bear the burden of producing and proving by a preponderance of the evidence any circumstance that would justify reducing the amount of the penalty and assessment.
- B.** Statistical sampling:
1. The Director or designee may introduce the results of a statistical sampling study as evidence of the number and amount of claims or requests for payment that were presented or caused to be presented by the person in meeting the burden of proof described in subsection (A). A statistical sampling study shall constitute prima facie evidence of the number and amount of claims or requests for payment, if based upon an appropriate sampling and computed by valid statistical methods.
 2. The burden of proof shall shift to the person to produce evidence reasonably calculated to rebut the findings of the statistical sampling study once the Director or designee has made a prima facie case as described in subsection (A). The Director or designee will be given the opportunity to rebut this evidence.

AHCCCS shall consider any of the following to be mitigating circumstances when determining the amount of a penalty, assessment, or penalty and assessment.

1. Nature and circumstances of a claim. The following are mitigating circumstances:
 - a. All the services are of the same type.
 - b. All the dates of services occurred within six months or less.
 - c. The services listed in subsection (1)(b) total less than 25.
 - d. The nature and circumstances do not indicate a pattern of inappropriate claims for the services, and
 - e. The total amount claimed for the services is less than \$1,000.
2. Degree of culpability. The degree of culpability of a provider or non-contracting provider who presents or causes to present a claim is a mitigating circumstance if:
 - a. Each service is the result of an unintentional and unrecognized error in the process that the provider or non-contracting provider followed in presenting or in causing to present the service.
 - b. Corrective steps were taken promptly by the provider or non-contracting provider after the error was discovered, and
 - c. The provider or non-contracting provider had a fraud and abuse control plan that was operating effectively at the time each claim was presented or caused to be presented.
3. Financial condition. The financial condition of a provider or non-contracting provider who presents or causes to

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present a claim is a mitigating circumstance if the imposition of a penalty, assessment, or penalty and assessment without reduction jeopardizes the ability of the provider or non-contracting provider to continue as a health care provider. AHCCCS shall consider the resources available to the provider or non-contracting provider when determining the amount of the penalty, assessment, or penalty and assessment.

4. Other matters as justice may require. AHCCCS shall take into account other circumstances of a mitigating nature, if in the interest of justice, the circumstances require a reduction of the penalty, assessment, or penalty and assessment.

R9-22-1105. Aggravating Circumstances

AHCCCS shall consider any of the following to be aggravating circumstances when determining the amount of a penalty, assessment, or penalty and assessment.

1. Nature and circumstances of each claim. The nature and circumstances of each claim and the circumstances under which the claim is presented or caused to be presented are aggravating circumstances if:
 - a. A provider or non-contracting provider has forged, altered, recreated, or destroyed records;
 - b. The provider or non-contracting provider refuses to provide pertinent documentation to AHCCCS for a claim or refuses to cooperate with investigators for other than constitutional reasons;
 - c. The services are of several types;
 - d. All the dates of services did not occur within six months or less;
 - e. The services rendered in subsection (1)(d) are greater than 25;
 - f. The nature and circumstances indicate a pattern of inappropriate claims for the services; and
 - g. The total amount claimed for the services is \$5,000 or greater.
2. Degree of culpability. The degree of culpability of a provider or non-contracting provider who presents or causes to present each claim is an aggravating circumstance if:
 - a. The provider or non-contracting provider knows or had reason to know that each service was not provided as claimed.
 - b. The provider or non-contracting provider knows or had reason to know that no payment could be made because the provider or non-contracting provider had been excluded from reimbursement by AHCCCS, or
 - c. The provider or non-contracting provider knows or had reason to know that the payment would violate the terms of an agreement between the provider or non-contracting provider and AHCCCS system.
3. Prior offenses. The prior offenses of a provider or non-contracting provider who presents or causes to present each claim are an aggravating circumstance if:
 - a. At any time before the submittal of the claim the provider or non-contracting provider was held criminally or civilly liable for any act; or
 - b. The provider or non-contracting provider had received an administrative sanction in connection with:
 1. A Medicaid program,
 2. A Medicare program, or
 3. Any other public or private program of reimbursement for medical services.
4. Effect on patient care. The adverse effect on patient care that resulted, or could have resulted, from the failure of a provider or non-contracting provider who presents or causes to present a claim to provide medically necessary care.
5. Other matters as justice may require. AHCCCS shall take into account other circumstances of an aggravating nature, if in the interest of justice, the circumstances require an increase of the penalty, assessment, or penalty and assessment.

R9-22-1106. Notice of Intent

If AHCCCS imposes a penalty, assessment, or a penalty and assessment, AHCCCS shall hand deliver or send by certified mail return receipt requested or Federal Express to the provider or non-contracting provider, a written Notice of Intent to impose a penalty, assessment, or a penalty and assessment. The Notice of Intent shall include:

1. The statutory basis for the penalty, assessment, or the penalty and assessment;
2. Identification of the state or federal regulation and state or federal law that AHCCCS alleges has been violated;
3. The factual basis for AHCCCS' determination that the penalty, assessment, or the penalty and assessment should be imposed;
4. The amount of the penalty, assessment, or penalty and assessment;
5. The process for the provider or non-contracting provider to accept or request a compromise of the penalty, assessment, or penalty and assessment; and
6. The process for requesting a State Fair Hearing.

R9-22-1108. Request for a Compromise

- A.** To request a compromise, the provider or non-contracting provider shall file a written request with AHCCCS within 30 days from the date of receipt of the Notice of Intent. The written request for compromise shall contain the provider or non-contracting provider's reasons for the reduction or modification of the penalty, assessment, or penalty and assessment.
- B.** Within 30 days from the date of receipt of the request for compromise from the provider or non-contracting provider,

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AHCCCS shall send a Notice of Compromise Decision and accept, deny, or offer a counter proposal to the provider or non-contracting provider's request for compromise. If AHCCCS offers a counter proposal the amount of the counter proposal shall represent the penalty, assessment, or penalty and assessment.

1. If AHCCCS does not withdraw the Notice of Intent under R9-22-1112 or denies the request for compromise the original penalty, assessment, or penalty and assessment is upheld.
2. To dispute the Compromise Decision, the provider or non-contracting provider shall file a request for a State Fair Hearing under R9-22-1110 within 30 days from the date of receipt of the Notice of Compromise Decision.

R9-22-1109. Failure to Respond to the Notice of Intent

If a provider or non-contracting provider fails to respond timely to the Notice of Intent, AHCCCS shall uphold the original penalty, assessment, or penalty and assessment.

R9-22-1110. Request for State Fair Hearing

- A. To request a State Fair Hearing regarding a dispute concerning a penalty, assessment, or penalty and assessment, the provider or non-contracting provider shall file a written request for a State Fair Hearing with AHCCCS within 60 days from the date of the receipt of the Notice of Intent under R9-22-1106 or within 30 days from the date of receipt of the Notice of Compromise Decision under R9-22-1108, if applicable.
- B. AHCCCS shall mail a Notice of Hearing under A.R.S. § 41-1092.05 if AHCCCS receives a timely request for a State Fair Hearing from the provider or non-contracting provider.
- C. AHCCCS shall mail a Director's Decision to the provider or non-contracting provider no later than 30 days after the date the Administrative Law Judge sends the decision of the Office of Administrative Hearings (OAH) to AHCCCS.
- D. AHCCCS shall accept a written request for withdrawal of a hearing request if the written request for withdrawal is received from the provider or non-contracting provider before AHCCCS mails a Notice of Hearing under A.R.S. § 41-1092 et seq. If AHCCCS mailed a Notice of Hearing under A.R.S. §41-1092 et seq., a provider or non-contracting provider may withdraw the hearing request only by sending a written request for withdrawal to OAH.

R9-22-1111. Issues and Burden of Proof

- A. Preponderance of evidence. In any State Fair Hearing conducted under R9-22-1110, AHCCCS shall prove by a preponderance of the evidence that a provider or non-contracting provider presented or caused to be presented each claim in violation of this Article and any aggravating circumstances under R9-22-1105. A provider or non-contracting provider shall bear the burden of producing and proving by a preponderance of the evidence any circumstance that would justify reducing the amount of the penalty, assessment, or penalty and assessment.
- B. Statistical sampling.
 1. In meeting the burden of proof described in subsection (A), AHCCCS may introduce the results of a statistical sampling study as evidence of the number and amount of claims that were presented or caused to be presented by the provider or non-contracting provider. A statistical sampling study constitutes prima facie evidence of the number and amount of claims if based upon an appropriate sampling and computed by valid statistical methods.
 2. The burden of proof shall shift to the provider or non-contracting provider to produce evidence reasonably calculated to rebut the findings of the statistical sampling study once AHCCCS has made a prima facie case as described in subsection (B)(1). AHCCCS shall be given the opportunity to rebut this evidence.

R9-22-1112. Withdrawal and Continuances

AHCCCS may withdraw the Notice of Intent at any time. Prior to referring a matter to the Office of Administrative Hearings the parties may mutually agree to a continuance.

NOTICE OF FINAL RULEMAKING

TITLE 9. HEALTH SERVICES

CHAPTER 28. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM (AHCCCS)
ARIZONA LONG-TERM CARE SYSTEM

PREAMBLE

- | | |
|--|--|
| <u>1. Sections Affected</u>
R9-28-1001 | <u>Rulemaking Action</u>
Amend |
| <u>2. The statutory authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):</u>
Authorizing statute: A.R.S. § 36-2932
Implementing statute: A.R.S. § 36-2957 | |

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3. The effective date of the rules:

September 11, 2004

4. A list of all previous notices appearing in the Register addressing the final rule:

Notice of Rulemaking Docket Opening: 9 A.A.R. 2119, June 27, 2003

Notice of Proposed Rulemaking: 10 A.A.R. 1076, March 26, 2004

5. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:

Name: Linda Barry
Address: AHCCCS
Office of Legal Assistance
701 E. Jefferson, Mail Drop 6200
Phoenix, AZ 85034
Telephone: (602) 417-4484
Fax: (602) 253-9115
E-mail: Lbbarry@ahcccs.state.az.us

6. An explanation of the rule, including the agency's reasons for initiating the rule:

AHCCCS made changes to 9 A.A.C. 28, Article 10 to provide additional clarity and conciseness to existing rule language and to comply with the Five-Year-Review Report made in January 2003.

7. A reference to any study relevant to the rule that the agency reviewed and either relied on in its evaluation of or justification for the rule or did not rely on in its evaluation of or justification for the rule, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:

No studies were reviewed.

8. A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:

Not applicable

9. The summary of the economic, small business, and consumer impact:

The contractors, members, providers, and AHCCCS are nominally impacted by the changes to the rule language. These rules define specific facets of Civil Monetary Penalties for the AHCCCS Arizona Long-term Care Program. AHCCCS is amending these rules to make the rules more clear, concise, and understandable by grouping like concepts to provide clarity and conciseness to the rule language.

It is anticipated that the private sector, including small businesses or political subdivisions will not be impacted because the rule language changes are intended to streamline and clarify the existing rules. AHCCCS, contractors, providers, and non-contracted providers will benefit because the changes provide clarification of the rule language.

10. A description of the changes between the proposed rules, including supplemental notices, and final rules (if applicable):

General	AHCCCS made the rules more clear, concise, and understandable by making grammatical and structural changes throughout the rules.
General	The agency made minor technical changes at the suggestion of the Governor's Regulatory Review Council staff.

11. A summary of the comments made regarding the rule and the agency response to them:

No comments were received.

12. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:

Not applicable

13. Incorporations by reference and their location in the rules:

None

14. Was this rule previously adopted as an emergency rule?

No

Notices of Final Rulemaking

15. The full text of the rules follows:

TITLE 9. HEALTH SERVICES

**CHAPTER 28. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM (AHCCCS)
ARIZONA LONG-TERM CARE SYSTEM**

ARTICLE 10. CIVIL MONETARY PENALITIES AND ASSESSMENTS

Section

R9-28-1001. Basis for Civil Monetary Penalties and Assessments for Fraudulent Claims

ARTICLE 10. CIVIL MONETARY PENALTIES AND ASSESSMENTS

R9-28-1001. Basis for Civil Monetary Penalties and Assessments for Fraudulent Claims

~~The Director or designee shall impose a penalty and assessment under the circumstances described in A.R.S. § 36-2957. The Administration shall use the procedures detailed in 9 A.A.C. 22, Article 11 for the determination and collection of civil penalties and assessments.~~

AHCCCS shall use the provisions in 9 A.A.C. 22, Article 11 for the determination and collection of penalties, assessments, and penalty and assessments.

NOTICE OF FINAL RULEMAKING

TITLE 9. HEALTH SERVICES

**CHAPTER 31. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM
CHILDREN'S HEALTH INSURANCE PROGRAM**

PREAMBLE

1. Sections Affected

R9-31-1101
R9-31-1102
R9-31-1103
R9-31-1104

Rulemaking Action

Amend
Repeal
Repeal
Repeal

2. The statutory authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):

Authorizing statute: A.R.S. §§ 36-2991 and 36-2993

Implementing statute: A.R.S. §36-2991

3. The effective date of the rules:

September 11, 2004

4. A list of all previous notices appearing in the Register addressing the final rule:

Notice of Rulemaking Docket Opening: 9 A.A.R. 2118, June 27, 2003

Notice of Proposed Rulemaking: 10 A.A.R.1078, March 26, 2004

5. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:

Name: Linda Barry
Address: AHCCCS
Office of Legal Assistance
701 E. Jefferson, Mail Drop 6200
Phoenix, AZ 85034
Telephone: (602) 417-4484
Fax: (602) 253-9115
E-mail: Lbbarry@ahcccs.state.az.us

6. An explanation of the rule, including the agency's reasons for initiating the rule:

AHCCCS proposes to change 9 A.A.C. 31, Article 11 to provide additional clarity, specificity, and conciseness to existing rule language and to comply with the five-year review report made in January 2003.

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- 7. A reference to any study relevant to the rule that the agency reviewed and either relied on in its evaluation of or justification for the rule or did not rely on in its evaluation of or justification for the rule, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:**

No studies were reviewed.

- 8. A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:**

Not applicable

- 9. The summary of the economic, small business, and consumer impact:**

The contractors, members, providers, and AHCCCS are nominally impacted by the changes to the rule language. These rules define specific facets of Civil Monetary Penalties for the AHCCCS KidsCare program. AHCCCS is amending these rules to make the rules more clear, concise, and understandable by grouping like concepts to provide clarity and conciseness to the rule language.

It is anticipated that the private sector, including small businesses or political subdivisions will not be impacted since the proposed rule language changes are intended to streamline and clarify the existing rules. AHCCCS, contractors, non-contracted providers, and providers will benefit because the changes provide clarification of the rule language.

- 10. A description of the changes between the proposed rules, including supplemental notices, and final rules (if applicable):**

General	AHCCCS made the rules more clear, concise, and understandable by making grammatical and structural changes throughout the rules.
General	The agency made minor technical changes at the suggestion of the Governor's Regulatory Review Council staff.

- 11. A summary of the comments made regarding the rule and the agency response to them:**

No comments were received.

- 12. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:**

Not applicable

- 13. Incorporations by reference and their location in the rules:**

None

- 14. Was this rule previously adopted as an emergency rule?**

No

- 15. The full text of the rules follows:**

TITLE 9. HEALTH SERVICES

**CHAPTER 31. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM (AHCCCS)
CHILDREN'S HEALTH INSURANCE PROGRAM**

ARTICLE 11. CIVIL MONETARY PENALTIES AND ASSESSMENTS

Section

- R9-31-1101. Basis for Civil Monetary Penalties and Assessments for Fraudulent Claims
 R9-31-1102. ~~Determinations Regarding the Amount of the Penalty and Assessment~~ Repealed
 R9-31-1103. ~~Notice of Proposed Determination and Rights of Parties~~ Repealed
 R9-31-1104. ~~Issues and Burden of Proof~~ Repealed

ARTICLE 11. CIVIL MONETARY PENALTIES AND ASSESSMENTS

R9-31-1101. Basis for Civil Monetary Penalties and Assessments for Fraudulent Claims

~~A.~~ Establishment and management of a system to prevent fraud. As specified in A.R.S. § 36-2986(A), the Director has full

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operational authority to adopt rules for the establishment and management of a system to prevent fraud by members, contractors, and health care providers.

- B.** Determination and collection of civil penalties. As specified in A.R.S. §§ 36-2991 and 36-2993 the Director may adopt rules that prescribe procedures for the determination and collection of civil penalties.
- C.** Federal fraud and abuse controls. As specified in A.R.S. § 36-2991, in addition to the requirements of state law, any applicable fraud and abuse controls that are enacted under federal law apply to a person who is eligible for services under this Chapter and to contractors and noncontracting providers who provide services under this Chapter.
- D.** Unpaid civil penalties. As specified in A.R.S. § 36-2991, if a civil penalty imposed according to this Article is not paid, the state may file an action to collect the civil penalty in the superior court in Maricopa county.
- E.** Circumstances for imposing a penalty and assessment. The Director or designee shall impose a penalty and assessment under the circumstances described in A.R.S. § 36-2991. For the purposes of this Article, the term "reason to know" means that a person, with respect to information, acts in deliberate ignorance of the truth or falsity of the information or with reckless disregard of the truth or falsity of the information. No proof of specific intent to defraud is required.
- F.** Violation of agreement. As specified in A.R.S. § 36-2992, the Director's or designee's determination of whether a person knew or had reason to know that each claim or request for payment was claimed in violation of an agreement with the Administration or a contractor may be based on the terms of the agreement.

AHCCCS shall use the provisions in 9 A.A.C. 22, Article 11 for the determination and collection of penalties, assessments, and penalty and assessments.

R9-31-1102. Determinations Regarding the Amount of the Penalty and Assessment Repealed

- A.** Factors for determining a penalty and assessment. The Director or designee shall take into account the following factors in determining the amount of a penalty and assessment:
 1. The nature of each claim or request for payment and the circumstances under which it is presented;
 2. The degree of culpability of a person submitting each claim or request for payment;
 3. The history of prior offenses of a person submitting each claim or request for payment;
 4. The financial condition of a person presenting each claim or request for payment;
 5. The effect on patient care resulting from the failure to provide medically necessary care by a person submitting each claim or request for payment; and
 6. Other matters as justice may require.
- B.** Types of claim circumstances. As specified in A.R.S. § 36-2991, in determining the amount of a penalty and assessment, the Director or designee shall consider both mitigating circumstances and aggravating circumstances surrounding submission of each claim or request for payment.
- C.** Mitigating circumstance guidelines. The Director or designee shall consider the following mitigating circumstance guidelines when determining the amount of a penalty and assessment:
 1. Nature and circumstances of each claim or request for payment. The nature and circumstances of each claim or request for payment and the circumstances under which it is presented are a mitigating circumstance if:
 - a. All the items and services subject to a penalty and assessment are of the same type;
 - b. All the items and services subject to a penalty and assessment occurred within a short period of time;
 - c. There are few items and services; and
 - d. The total amount claimed for the items and services was less than \$1,000.
 2. Degree of culpability. The degree of culpability of a person submitting a claim or request for payment is a mitigating circumstance if:
 - a. Each item or service is the result of an unintentional and unrecognized error in the process the person followed in presenting the item or service;
 - b. Corrective steps were taken promptly after the error was discovered; and
 - c. A fraud and abuse control plan was adopted and operating effectively at the time each claim or request for payment was submitted.
 3. Financial condition. The financial condition of a person presenting a claim or request for payment is a mitigating circumstance if the imposition of a penalty and assessment without reduction will jeopardize the ability of the person to continue as a health care provider. The resources available to the person may be considered when determining the amount of the penalty and assessment; or
 4. Other matters as justice may require. Other circumstances of a mitigating nature will be taken into account if, in the interest of justice, the circumstances require a reduction of the penalty and assessment.
- D.** Aggravating circumstance guidelines. The Director or designee shall consider the following aggravating circumstance guidelines when determining the amount of a penalty and assessment:
 1. Nature and circumstances of each claim or request for payment. The nature and circumstances of each claim or request for payment and the circumstances under which it is presented are an aggravating circumstance if:
 - a. The items and services subject to a penalty and assessment are of several types;
 - b. The items and services subject to a penalty and assessment occurred over a lengthy period of time;
 - c. There are many items or services (or the nature and circumstances indicate a pattern of claims for the items or

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- services), or
- d. The total amount claimed for the items and services is \$1,000 or greater.
- 2. Degree of culpability. The degree of culpability of a person submitting each claim or request for payment is an aggravating circumstance if:
 - a. The person knew that each item or service was not provided as claimed;
 - b. The person knew that no payment could be made because the person had been excluded from system reimbursement; or
 - e. Payment would violate the terms of an agreement between the person and the state, the Administration or a contractor.
- 3. Prior offenses. The prior offenses of a person submitting each claim or request for payment is an aggravating circumstance if, at any time before the presentation of any claim or request for payment subject to a penalty and assessment under this Article, the person was held liable for a criminal, civil, or administrative sanction in connection with:
 - a. A Medicaid program;
 - b. A Medicare program;
 - e. A Title XXI program; or
 - d. Any other public or private program of reimbursement for medical services.
- 4. Effect on patient care. The seriousness of an adverse effect that resulted, or could have resulted, from the failure of a person submitting a claim or request for payment to provide medically necessary care is an aggravating circumstance; or
- 5. Other matters as justice may require. Other circumstances of an aggravating nature shall be taken into account if, in the interest of justice, the circumstances require an increase of the penalty and assessment.
- E.** Amount of penalty and assessment. As specified in A.R.S. § 36-2993 and this Article, the aggregate amount of a penalty and assessment shall never be less than double the approximate amount of damages sustained by the state, the Administration or contractor, unless there are extraordinary mitigating circumstances.
- F.** Compromise. The Director or designee may compromise a penalty and assessment using the guidelines in subsections (C) and (D).

R9-31-1103. Notice of Proposed Determination and Rights of Parties Repealed

- A.** Administration's responsibilities. If the Director or designee proposes to impose a penalty and assessment, the Director or designee shall deliver or send by certified mail, return receipt requested, to a person, written notice of intent to impose a penalty and assessment. The notice shall include:
 - 1. Reference to the statutory basis for the penalty and assessment;
 - 2. A description of each claim or request for payment for which the penalty and assessment are proposed;
 - 3. The reason why each claim or request for payment subjects the person to a penalty and assessment; and
 - 4. The amount of the proposed penalty and assessment.
- B.** Individual's responsibilities. A person may submit within 35 days from the date of the adverse action:
 - 1. A written statement accepting imposition of the penalty and assessment;
 - 2. As specified in A.R.S. § 36-2993 a written request for a compromise of the penalty and assessment stating any reasons that the person contends should result in a reduction or modification of the penalty and assessment. If a request is submitted, the time period for filing an appeal and request for hearing according to subsection (C) shall be tolled until the Director's or designee's decision on the request for compromise; or
 - 3. A grievance in accordance with the provider grievance provision in 9 A.A.C. 31, Article 8 of this Chapter.
- C.** The Director or designee may impose a proposed penalty and assessment or any less severe penalty and assessment if a person does not request a hearing within the time prescribed by subsections (B)(2) or (3). A person has no right to appeal a penalty and assessment if the person has not timely requested a hearing.

R9-31-1104. Issues and Burden of Proof Repealed

- A.** Preponderance of evidence. In any hearing conducted according to this Article, the Director or designee shall prove by a preponderance of the evidence that a person who requested a hearing presented or caused to be presented each claim or request for payment in violation of R9-31-1101. A person who requests a hearing shall bear the burden of producing and proving by a preponderance of the evidence any circumstance that would justify reducing the amount of the penalty and assessment.
- B.** Statistical sampling:
 - 1. The Director or designee may introduce the results of a statistical sampling study as evidence of the number and amount of claims or requests for payment that were presented or caused to be presented by the person in meeting the burden of proof described in subsection (A). A statistical sampling study shall constitute prima facie evidence of the number and amount of claims or requests for payment, if based upon an appropriate sampling and computed by valid statistical methods.
 - 2. The burden of proof shall shift to the person to produce evidence reasonably calculated to rebut the findings of the

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~~statistical sampling study once the Director or designee has made a prima facie case as described in subsection (A). The Director or designee will be given the opportunity to rebut this evidence.~~

NOTICE OF FINAL RULEMAKING

TITLE 15. REVENUE

CHAPTER 5. DEPARTMENT OF REVENUE
TRANSACTION PRIVILEGE AND USE TAX SECTION

PREAMBLE

1. **Sections Affected**
R15-5-1503
- Rulemaking Action**
Amend
2. **The specific statutory authority for the rulemaking, including both the authorizing statute (general) and the implementing statute (specific):**
Authorizing statute: A.R.S. § 42-1005
Implementing statute: A.R.S. § 42-5071
3. **The effective date of the rule:**
September 11, 2004
4. **A list of all previous notices appearing in the Register addressing the final rule:**
Notice of Rulemaking Docket Opening, 9 A.A.R. 1974, June 20, 2003
Notice of Proposed Rulemaking, 10 A.A.R. 347, Jan. 30, 2004
5. **The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**
Name: Hsin Pai, Tax Analyst
Address: Tax Policy and Research Division
Arizona Department of Revenue
1600 W. Monroe, Room 810
Phoenix, AZ 85007
Telephone: (602) 716-6851
Fax: (602) 716-7995
E-mail: paih@revenue.state.az.us
Please visit the ADOR Web site to track the progress of these rules and other agency rulemaking matters at www.revenue.state.az.us/tra/draftdoc.htm.
6. **An explanation of the rule, including the agency's reasons for initiating the rulemaking:**
The agency is amending the rule to reflect new standards for how the location of leasing activity for tangible personal property is determined for purposes of imposing the transaction privilege tax. The new rule also articulates several factors the agency may examine on leases or rentals of motor vehicles, and states that a taxpayer cannot take a deduction or credit for taxes paid to another state on a lease or rental of tangible personal property.
7. **A reference to any study relevant to the rule that the agency reviewed and either relied on or did not rely on in its evaluation of or justification for the rule, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:**
None
8. **A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:**
Not applicable
9. **A summary of the economic, small business, and consumer impact:**
Because the rule provides a new method for determining the location of leasing activity for taxation purposes, some consumers and vendors may bear varying levels of administrative costs due to compliance measures, though any costs are mitigated by savings realized on leases of personal property taken outside the state for exclusive use outside of Arizona. The agency expects that the benefits of the final rule to the public and the Department from having a bright-line standard for lease sourcing will be greater than the costs. The final rule may cause a negative impact on state revenue if any transaction privilege tax revenue is currently derived from leases and rentals of personal property taken out of state for exclusive use outside the state.

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10. A description of the changes between the proposed rule, including supplemental notices, and final rule:

There are two changes between the proposed rule and the final rule, neither of which is substantive in nature:

1. In the Notice of Proposed Rulemaking, A.A.C. R15-5-1503(C) read, "The Department shall source gross receipts from leasing or renting tangible personal property to a *lessor's* business location" (emphasis added). The specification of "lessor's business location" was inaccurate and confusing when read with the definition of "business location" provided in A.A.C. R15-5-1503(A)(1), which explains that "business location" means either: (1) the business address on the transaction privilege license, under which the lessor files the transaction privilege tax, if the lessor has an Arizona business address; *or* (2) the *lessee's* home or primary business street address. Thus, in the final rule printed *infra*, A.A.C. R15-5-1503(C) provides that the Department will source such gross receipts "to the business location."

2. The statements found in the previous version of A.A.C. R15-5-1503(C) regarding out-of-state lessors of equipment shipped, delivered, or otherwise brought into the state were struck in the proposed rule but have now been reworded and added to the same subsection in the final rule printed *infra*. The Department originally decided to strike the statements without replacement because the statement that gross receipts from leasing or renting tangible personal property to the "business location," combined with the definition of "business location," encompasses the specific situation for out-of-state lessors that was described. Nevertheless, to assist the public, the Department has decided to include it as an application of the sourcing rule provided in subsection (C).

11. A summary of the comments made regarding the rule and the agency response to them:

The Department received a comment inquiring as to whether the cities could change the sourcing methodology for their privilege taxes to conform to the provisions in the rule. The Department responded by explaining that city representatives participated in discussions of the rule during the drafting stage but did not articulate any intent to conform the sourcing rules for their privilege taxes to the rule.

12. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:

None

13. Any material incorporated by reference and its location in the text:

None

14. Was this rule previously made as an emergency rule? If so, was the text changed between the making as an emergency and the making of the final rule?

No

15. The full text of the rule follows:

TITLE 15. REVENUE

**CHAPTER 5. DEPARTMENT OF REVENUE
TRANSACTION PRIVILEGE AND USE TAX SECTION**

ARTICLE 15. PERSONAL PROPERTY RENTAL CLASSIFICATION

Section

R15-5-1503. ~~Location~~ Sourcing of Leased Equipment Tangible Personal Property

ARTICLE 15. PERSONAL PROPERTY RENTAL CLASSIFICATION

R15-5-1503. ~~Location~~ Sourcing of Leased Equipment Tangible Personal Property

A. Rental location from equipment leased by an Arizona lessor to a lessee who takes possession of the property in Arizona is ~~taxable under this classification. In this Section:~~

1. "Business location" means the business address that appears on a lessor's privilege license, but if the lessor does not have a business address in Arizona, business location means the lessee's residential or primary business street address.
2. "Source" means to determine the location of leasing or renting activity for tax purposes.

B. ~~Rental income from equipment leased by an Arizona lessor to a lessee is not taxable when such equipment is shipped or delivered out of state, for use outside of the state. The personal property rental classification applies to a person who is engaging or continuing in the business of leasing or renting tangible personal property in Arizona for a consideration. Gross receipts from leasing or renting tangible personal property in Arizona are taxable under this classification.~~

C. ~~Rental income from leasing of equipment by an out-of-state lessor is taxable when the equipment is shipped, delivered, or otherwise brought into Arizona, for use within the state. For example, when a vehicle is brought into Arizona and registered in Arizona, such vehicle is deemed to be for use in this state. The rental income is, therefore, taxable. The Department shall source gross receipts from leasing or renting tangible personal property to the business location. Thus, gross~~

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receipts of a lessor without a business address in Arizona, derived from leasing or renting tangible personal property, are sourced to the lessee's residential or primary business street address and are taxable when the property is shipped, delivered, or otherwise brought into the state for use in Arizona.

- D.** Gross receipts from leasing or renting tangible personal property are not taxable if the property is shipped or delivered outside of the state and intended, at the inception of the lease, for use exclusively outside of the state.
- E.** Gross receipts from leasing or renting tangible personal property are not taxable if the property is removed from the state and used exclusively outside of the state. Intermittent use of tangible personal property outside of the state does not constitute removal of the property from the state for use exclusively outside of the state, and therefore does not change the business location of the property or liability for the tax. For example, use of a business's leased tangible personal property by its employees at different locations on business trips and service calls does not change liability for the tax.
- F.** The burden of proof for establishing the applicability of subsection (D) or (E) is on the lessor.
- G.** For leasing or renting activity related to a motor vehicle, the Department shall examine whether the motor vehicle is licensed, registered, or primarily used in Arizona.
- H.** A taxpayer shall not take a deduction or credit for taxes paid in another state on a lease or rental of tangible personal property.

NOTICE OF FINAL RULEMAKING

TITLE 19. ALCOHOL, HORSE AND DOG RACING, LOTTERY, AND GAMING

CHAPTER 3. ARIZONA STATE LOTTERY COMMISSION

PREAMBLE

1. Sections Affected

R19-3-201
R19-3-202
R19-3-203
R19-3-204
R19-3-205
R19-3-206
R19-3-207
R19-3-208
R19-3-209

Rulemaking Action

Amend
Amend
Amend
Amend
Amend
Amend
Amend
Amend
New Section

2. The statutory authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):

The Lottery's general authority to promulgate retailer rules is A.R.S. § 5-504(B). The statutory authority for the specific rule amendments is discussed below.

The Lottery is charged by A.R.S. § 5-512 to not license a person who engages in business exclusively as a lottery sales agent and in R19-3-201(A)(1)(e) the rules are amended to require evidence that the applicant's primary business products or services are not Lottery products or services concerning lotteries.

The Lottery is charged by A.R.S. § 5-512 to consider the financial responsibility of the applicant, security issues concerning the applicant, the nature of the person's business activity, the person's background and reputation in the community, accessibility of the person's place of business, public business activity, accessibility of the existing licensee to serve the public convenience, and the volume of expected sales. The amended rule R19-3-201(A)(1)(f) through (h) requests the information needed by the Lottery to implement these statutory requirements including outstanding debts to the state, information from business references, and financial responsibility. The rule provides three alternate tests to determine financial responsibility: (1) whether an applicant has sufficient equity from which the Lottery could satisfy a judgment against the applicant, if necessary, (2) whether an applicant has paid its bills as they became due for a period of at least three years and does not have outstanding legal actions, judgments, or tax liens that jeopardize that status, or (3) if an applicant cannot meet any of these tests, an applicant may qualify if the applicant is able to provide a guarantor to protect the Lottery's financial interests. If the guarantor uses community property as collateral for the guarantee, A.R.S. § 25-214(C)(2) requires both spouses to sign a guarantee. In the alternative, if a guarantor provides sufficient proof of the existence of separate property, a personal guarantee in writing signed by the individual and not co-signed by a spouse may be provided.

As provided in A.R.S. § 41-1750(G)(2), pursuant to an executive order, a noncriminal justice agency may obtain criminal history record information through a fingerprint card for the purpose of evaluating the fitness of current or prospective licensees. At the commencement of the Lottery, the Governor issued Executive Order 81-2, which is still in effect and attached as exhibit "A," to establish the right of the Arizona Lottery to obtain and maintain information concerning arrests and convictions of a person for public offenses. The Lottery is charged by A.R.S. § 5-512 to consider the security issues and the background of a person applying for a license to sell lottery tickets. Under this autho-

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rization and to fulfill this duty R19-3-201(A)(2)(c), R19-3-201(A)(3)(c), and R19-3-201(A)(4)(c) request a fingerprint card for the purpose of evaluating the fitness of current and prospective licensees.

The Lottery is charged by A.R.S. § 5-512 to consider the volume of expected sales in licensing an agent to sell lottery tickets. The Lottery requests information in R19-3-201(A)(1)(d) concerning the applicant's retail activities to predict the retailer's ability to meet the minimum sales requirements. In R19-3-201(B)(5) the Lottery evaluates the applicant's ability to meet or exceed the required minimum based on information relating to the number of people purchasing existing goods or services from the applicant or information relating to a comparable retailer.

Statutory authority for R19-3-201(C) is derived from the legislative requirement of A.R.S. § 5-504(B) to produce the maximum amount of net revenue consonant with the dignity of the state. Based on the legislature mandating these dual responsibilities, R19-3-201(C) establishes that a sexually-oriented business, as defined in A.R.S. § 13-1422, is not consonant with the dignity of the state. Deferred presentment companies also are prevented from selling lottery tickets on their licensed premises and are omitted from eligible licensees. A.R.S. § 6-1259.

A retailer is required to carry a minimum of four varieties of instant tickets in R19-3-201(F) authorized under A.R.S. § 5-504(B) requiring the Lottery to maximize net revenue. Most retailers carry eight to sixteen varieties of instant tickets. Data indicates that chain stores that recently increased the number of instant games offered to the public from twelve to sixteen showed an overall increase in sales of 25%. The Lottery does not require a retailer to carry any specific game, but instead requires a retailer to select at least four instant games from all the available games.

Selling a lottery ticket to a person under the age of 21 is an absolute liability criminal statute. A.R.S. § 5-515. Under the Arizona Criminal Code no intent is required for an absolute liability criminal statute. The code requires only "conduct" as an absolute requisite to criminal liability. *State v. Agnew*, 132 Ariz. 567, 579, 647 P.2d 1165, 1177 (Ct. App. 1982). Therefore, R19-3-203(A)(2) was in error when it required a knowing violation and is here amended.

3. The effective date of the rules:

September 11, 2004

4. A list of all previous notices appearing in the Register addressing the final rules:

Notice of Rulemaking Docket Opening: 9 A.A.R. 1364, May 2, 2003

Notice of Proposed Rulemaking: 9 A.A.R. 1332, May 2, 2003

Notice of Supplemental Proposed Rulemaking: 10 A.A.R. 652, February 27, 2004

5. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:

Name: Kathleen S. Pushor, Executive Director

Address: 4740 E. University Drive
Phoenix, AZ 85034

Telephone: (480) 921-4505

Fax: (480) 921-4488

E-mail: katiep@lottery.state.az.us

or

Name: Pam Scharon, Budget Manager

Address: 4740 E. University Drive
Phoenix, AZ 85034

Telephone: (480) 921-4489

FAX: (480) 921-4425

E-mail: pam@lottery.state.az.us

6. An explanation of the rules, including the agency's reason for initiating the rules:

Article 2, Retailers, is required by A.R.S. § 5-504 and prescribes the requirements and procedures for Arizona retailer businesses to obtain a license to sell Lottery game products, display promotional materials, requirements for the sale and payment of instant games and on-line games, and retailer conduct. The rules establish procedures for revocation, suspension, or renewal of retailer licenses, hearing procedures and Lottery-conducted compliance investigations. This amendment incorporates changes suggested by Lottery staff, retailers, and legal counsel as a result of operating with these rules for several years and program policy recommendations from the Lottery's Retail Advisory Committee. The amendment also provides consistency in the language of the text and, further, makes the rules more clear, concise, and understandable.

7. A reference to any study relevant to the rules that the agency reviewed and either relied on in its evaluation of or justification for the rules or did not rely on in its evaluation of or justification for the rules, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting materials:

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None

8. A showing of good cause why the rules are necessary to promote a statewide interest if the rules will diminish a previous grant of authority of a political subdivision of this state:

Not applicable

9. The summary of the economic, small business, and consumer impact:

A. The Arizona State Lottery.

Costs to the Lottery for this Article are included in the agency's appropriated budget. Retailer-related costs include background investigations for licensing, delivery of tickets, supplies and point-of-sale promotional items, installation of telephone lines for the on-line terminal and monthly telecommunication fees for each retailer selling on-line games, and administrative costs collecting sales revenues and providing customer service to retailers. Cost of a licensing investigation, which includes an Americans with Disabilities Act (ADA) onsite inspection, credit report (\$1 for individual and \$29 for corporations), and fingerprint check (\$5 for state or \$29 for national), is approximately \$200 per location. Initial telecommunication line installation for an on-line retailer terminal is approximately \$550 and the average monthly line charge is \$61. The Lottery has approximately 2500 on-line retailers. The Lottery paid \$2.8 million in telecommunication line-charges last fiscal year.

The amendment of R19-3-202 reflects the Lottery's addition to its promotional activities allowed by order under A.R.S. § 5-504(C)(3)(4) to sell lottery tickets at promotional events. Most promotional events are held at the retailer's premises and at these events the Lottery does not sell tickets, only the retailer sells tickets. In addition, the Lottery conducts numerous promotions statewide including the Coyotes® Pick 3™ title sponsorship, sports sponsorships, Arizona State Fair, Oktoberfest, and Women's Expo, that are used to promote new Lottery products like Slingo® and to sell tickets. Statewide road trips utilize added value radio-remotes in each market to broadcast the Lottery's promotional message. In addition, promotions are conducted throughout the year to celebrate sales of substantial winning tickets at the retail location where each sale occurred. The promotional campaigns are evaluated each year on the basis of their effectiveness at promoting products.

B. Political Subdivisions.

Political subdivisions of this state are not directly affected by the Retailer rules.

C. Businesses Directly Affected by the Rulemaking.

Businesses affected by these rules are those retailers that choose to apply for a Lottery license to sell Lottery game products to the public. The rules provide for licensing requirements, retailer conduct in selling and redeeming Lottery tickets, and compensation paid to retailers for Lottery services. The Lottery paid retailers over \$19.8 million in commissions in fiscal year 2002. Tickets do not require special storage except for normal risk management procedures, have almost unlimited shelf-life, do not spoil, and do not require additional employees to handle the product.

The economic impact of specific rules on businesses is discussed by specific rule amendment. The Lottery is charged to maximize net revenue in A.R.S. § 5-504(B) and it has chosen to limit losses through R19-3-201 which provide effective retailer screening for financial responsibility and cost-effective procedures in licensing and collection. This decision has been beneficial to both the Lottery and the retailers.

The Lottery has a very low rate of defaults and no losses due to dishonest acts by retailers (although retailers with employee thefts are discussed below). This procedure eliminates the need for high cost blanket bonds. At the close of fiscal year 2003, out of total revenue of \$322 million, the amount in collection from retailers was \$22,000 and \$5,000 of that was in a large bankruptcy where it is anticipated that the Lottery's claim will be paid. Of the remaining \$17,000 a portion will be collected by the Attorney General's Office. With this low default rate (.00007) the best method of maximizing net revenue has been to expand the Lottery's retailer base with only financially responsible retailers. To maximize that base to include new retailers - who otherwise would not qualify - the Lottery provides an option for applicants to provide an account guarantee.

As discussed under statutory authority, the legislative mandate to the Lottery is to maximize revenue to the state while acting in accord with the dignity of the state. Therefore, in R19-3-201(A)(1)(d) and R19-3-201(B)(5) applicants are required to provide information concerning their present retail activities and customer base as an indicator that the applicant can meet the minimum required sales. The information is provided to the Lottery by an applicant through a marketing questionnaire which includes questions concerning an applicant's interest in selling both on-line and instant or just instant tickets; business references; information about the premises; information concerning onsite or off-site supervision of premises; store hours, major cross streets, number of cash registers; and products presently offered for sale within certain major categories.

The amendment of R19-3-203(A)(4) provides for an even playing field for all retailers by requiring a minimum dollar amount instead of the previous ticket minimums. This change recognizes that the Lottery presently offers for sale tickets with varying price points from \$1 to \$10. This change will assure a retailer that minimum sales are not affected by the retailer's choice of tickets. This change is neutral as to economic impact.

In conformance with the Legislative mandate to maximize sales in accord with the dignity of the State, A.R.S. § 5-504(B), applicants who are not eligible for a lottery license are listed in the amended R19-3-201(C). Those include

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sexually-oriented businesses as defined in A.R.S. § 13-1422 and deferred presentment as defined in A.R.S. § 6-1251 and prohibited by A.R.S. § 6-1259(B)(11).

A retailer is required by R19-3-201(F) to maintain at least four instant games for sale at all times, but the retailer and not the Lottery selects which instant games. Most retailers maintain eight or twelve different games and the larger retailers maintain sixteen different games.

The new rule R19-3-201(J) requiring the licensed retailer to report in writing any changes that could affect their license are of a nature that update application information or reflect authority to deal with the Lottery. The cost would be the time required to reduce the information to writing, make a copy, and either fax or attach a thirty-seven cent stamp.

The amendment of R19-3-201(I)(2)(c) allows the retailer to choose whether it is better economically to renew all of its locations at the same time or stagger renewals throughout the year on date the premises were originally licensed. Previously the retailer was required to renew all locations on the same date. The change is beneficial to the retailer and has no economic impact to the Lottery because each premise is licensed separately.

A retailer must maintain minimum required sales to retain its lottery license under R19-3-203(A)(4). If a retailer does not maintain the minimum required sales, the retailer has the option to pay the telephone line charges rather than relinquish its retailer license under R19-3-206(C)(2). In fiscal year 2003, 293 retailers opted to pay the line charge fee – which is the cost to the Lottery of maintaining the connection – rather than surrender its lottery licenses. If the failure to maintain minimum sales is due to conditions beyond the retailer's control, such as road work or seasonal sales, the retailer may apply for a waiver. In fiscal year 2003, waivers were requested by 245 retailers and the Lottery granted 209 waivers. Two retailers requested to change to instant-only tickets (the Lottery has no line connection costs with instant only) and sixteen retailers voluntarily relinquished their licenses.

In regard to R19-3-203(B)(19) and R19-3-203(D)(1)(b), statistics show that nationwide approximately 84% of all thefts of Lottery products occur at the retailer level, 16% of losses occurred during transit, because of poor book-keeping, or lost tickets. In fiscal year 1999, the Arizona Lottery experienced 91 incidents of reported stolen tickets. The breakdown of the thefts by type showed that 40% were retailer employee thefts, 14% burglaries, 5% robberies, 15% grab-and-runs, 7% other causes, and 19% internal problems. In fiscal year 2000, the Arizona Lottery experienced 95 incidents of reported stolen tickets with approximately 43% retailer employee theft, 20% unknown administrative error/employee theft, 10% burglaries, 11% robberies, 10% grab-and-runs, and 6% from other sources such as fraud. Of the reported thefts, 24 thefts occurred from gas stations, 18 thefts from convenience stores, 36 thefts from Circle K's, 6 thefts from grocery stores, 4 thefts from check cashing outlets, 2 thefts from liquor stores, and 1 theft from a truck stop.

Based on this information the Lottery developed its loss prevention program with the objective "to train and assist retailers and sales personnel in the recognition and prevention of retail loss, as well as the prosecution of individuals; thereby increasing retailer profitability." This program was modeled after a highly successful program in Idaho. The Lottery sales staff were instructed to assist in training and support the retailers in loss prevention. Most retailers maintain good loss prevention procedures or they would not be in business for long. However, if a retailer experiences a loss, the Lottery has developed procedures that can assist in reducing future risks and procedures to ease reporting thefts. The Lottery and the retailer each bear 50% of the cost of ticket losses not paid by the retailer's insurance and hold the same economic interest in preventing loss.

The Lottery has two directions in providing loss prevention information. It provides written materials to the retailers and works with retailers when they report a theft or other loss. The required loss prevention training is provided to the retailers in a manner that is most convenient to the retailers. With large corporate accounts training can be provided as part of the retailer's normal training schedule and with small independent retailers by a Lottery representative in the store. Additional opportunities are provided during installation of new equipment and through other optional training.

The alternate criteria for ending instant games are specified in R19-3-205(B). The Lottery presently has a written policy to end instant games when at least 90% of the game's inventory has been invoiced, the end of scheduled sales (depending on the price point), or when the last top prize has been claimed. Prizes are evenly distributed throughout the entire print quantity of the game, so the odds and overall prize payout with a 90% sell-through would remain comparable. Experience has shown that keeping fresh new games in the market increases overall revenue. Retailers receive credit for the partial packs and full packs that are returned to the Lottery, so this rule is income-neutral to the retailers. However, the constant changing of games increases overall revenue to the Lottery and commissions to the retailers.

The new instant ticket validation terminals for instant-only retailers provide a risk-free validation process, rather than the previous sight validation and R19-3-205(E) establishes the procedures concerning these terminals. Retailers are responsible for maintaining the cost of the telephone connection, however, the instant ticket validation terminal does not require a dedicated line, only a telephone line to call-in to the Lottery computer. It operates on the same principle as many charge card validators and the retailer's same telephone line or any other telephone line may be used.

The required training in R19-3-205(E)(8) concerning use of the instant ticket validation terminal is simple and the initial instruction is provided in the retailer's store by the Lottery's contractor that installs the device. The retailer

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is responsible for providing training to new staff. However, the Lottery sales representatives are trained on the validation terminal and can provide any additional training when they make regular visits to the retailer.

The practice of giving credit for void tickets which is ended in R19-3-206, follows the rule change by the Multi-State Lottery Association ending voids for Powerball®. The Lottery is bringing its rules for all games consistent with Powerball and will file R19-3-401(C)(3) to end all voids. This will be reviewed by the Attorney General, to be issued simultaneously with this rule. Precautionary measures have been built into the present on-line system to minimize operator error. For example, the system asks for confirmation before processing larger transactions. The Lottery did not issue any credits for voids in fiscal year 2004. Tickets that a retailer prints in error are sold to the next available customer; therefore, a retailer should have no economic loss due to this change.

D. Private and Public Employment.

Private and public employees are not directly affected by this rule.

E. Consumers and the Public.

There are no costs to the public associated with the amendment of this rule.

F. State Revenues.

Revenue generated by the sale of Lottery game tickets and license fees are deposited into the Lottery fund and the prize fund. The Legislature appropriates from these funds the amounts available for Lottery operations. The maximum percentage of the funds to be applied to operation of the Lottery is established in A.R.S. § 5-505, and A.R.S. §§ 5-521 and 5-522 specify the use of the revenues collected between player prizes and programs funded with Lottery monies. The Lottery collected \$24,100 in retailer license fees in fiscal year 2002. Transfers to State of Arizona funded programs were in excess of \$92.4 million.

10. A description of the changes between the proposed rules, including supplemental notices, and final rules (if applicable):

The following changes were made to this final draft of rules through a supplemental filing. The requested application information in R19-3-201(A) was redesigned to simplify and clarify. The word “foot traffic” was defined and that definition substituted for the term in R19-3-201(A)(1)(d). In R19-3-203(A)(1) the grounds for revocation, suspension, or denial of a license or renewal was clarified to include punishment by jail time, imprisonment, revocation of a lottery license or a crime involving moral turpitude. The provision for a continuation waiver in R19-3-201(K)(2) was eliminated.

A new provision was added in R19-3-203(A)(19) regarding failure to implement loss prevention procedures. Violating the laws of the United States was eliminated from R19-3-203(B). The provisions of R19-3-203 were changed to add a subsection (C) regarding notice to a retailer. The previous subsection (C) was changed to (D) and subsection (E) was eliminated. Subsection (F) was reorganized, and subsection (G) was eliminated.

The provisions of R19-3-205 were reorganized to simplify. The provision of R19-3-206(A)(4), was changed from requiring a retailer to “[a] licensee shall not devote more than 15 consecutive minutes of sales to a purchase by any single player if other customers are waiting to make a purchase.”

In addition technical and grammatical changes were made between the proposed and final rules.

11. A summary of the comments made regarding the rules and the agency response to them:

The Lottery received comments from a public member regarding R19-3-201(A) and R19-3-201(B). The public member believes the new language in R19-3-201(A), which provides a separate description for the license application requirements of each type of business entity, adds needless complexity to the process and requires a separate license application form. While the public member believes the current wording is elegant in its simplicity, what the Lottery found in practice was that applicants could not often determine which part of the requirements were applicable to its business type. After discussing this issue thoroughly, providing the Lottery’s Retailer Advisory Committee an opportunity to review and make comments, and providing the public an opportunity to review and make comments, the Lottery made several changes. The Lottery believes that the revised structure is the simplest manner to eliminate confusion. It provides all requirements that are universally applicable in one subpart and those entity specific requirements in three separate sub-parts. Also, in response to the comments, the Lottery envisions only one license application form consisting of a series of boxes to check to declare the business entity type and requirements.

The comment received from the public regarding R19-3-201(B)(5) found the original proposed rule confusing and needing a definition. In response, the supplemental rules substituted the words “approximate average daily number of persons entering the applicant’s business premises using at least ten sample days,” for foot traffic for R19-3-201(A)(1)(d). The purpose of this rule is to show an indication that the applicant has sufficient business to maintain a retail establishment without the sale of Lottery tickets based on A.R.S. § 5-512, and can meet minimum sales.

The comment received from the public expressed concern that this rule could eliminate many small stores. In response to this comment, the Lottery showed that the actual minimum dollar amount of sales has not changed since 1983. Prior rules provide the minimum of amount of tickets to be sold. This rule was originally written when all tickets were one dollar. Because tickets presently sold range from one dollar to ten dollars, the rule was changed to measure minimum sales in dollars and not tickets. However, the total dollar amount of minimum sales has not changed.

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The Lottery has many small retailers licensed under this standard. The present ratio of stores under this requirement is 1020 independent licenses and 42 corporate chain accounts with 1564 stores. Minimum sales requirements are necessary for the Lottery to recover its costs to license and maintain a retailer in order to fulfill its statutory duty to produce the maximum amount of net revenue for the state.

The commenter also pointed out the improper use of the word “effect” in R19-3-201(H). The word is changed to “affect” in the final rule.

The commenter suggested the Lottery provide an applicant without evidence of the ability to meet minimum sales an opportunity of paying an up-front fee deposit to cover the terminal equipment lease for the first quarter and subsequent non-performing quarters. The Lottery could not incorporate suggested changes because it does not have statutory authority to charge such a fee.

The Lottery received a comment dated February 21, 2001, from PowerPick, Inc. requesting that R19-3-206(A)(4), be changed from requiring a retailer to not devote more than 15 consecutive minutes of sales in any hour to a purchase by any single player, to a qualifier that “provides that no other prospective player is inconvenienced.” This rule was discussed with the Retailer Advisory Committee, who believed such a change would be detrimental to most retailers and its discretionary wording difficult for customer relations. After due consideration, the Lottery revised the rule to provide for the public convenience to read, “A licensee shall not devote more than 15 consecutive minutes of sales to a purchase by any single player if other customers are waiting to make a purchase.”

12. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:

Not applicable

13. Incorporations by reference and their location in the rules:

Not applicable

14. Were these rules previously made as emergency rules?

No

15. The full text of the rules follows:

TITLE 19. ALCOHOL, HORSE AND DOG RACING, LOTTERY, AND GAMING

CHAPTER 3. ARIZONA STATE LOTTERY COMMISSION

ARTICLE 2. RETAILERS

Section

R19-3-201.	Retailer’s Application and License
R19-3-202.	Direct Sales by Lottery
R19-3-203.	Revocation, Suspension, or Renewal Denial of Retailer’s License
R19-3-204.	Display of <u>Point-of-sale</u> and Promotional Material
R19-3-205.	Instant Game Requirements
R19-3-206.	On-Line <u>On-line</u> Game Requirements
R19-3-207.	Compliance Investigations
R19-3-208.	Penalties
<u>R19-3-209.</u>	<u>Notice and Service</u>

ARTICLE 2. RETAILERS

R19-3-201. Retailer’s Application and License

A. Application. A person interested in obtaining a license to sell lottery tickets shall:

1. Submit to the Director a verified application on forms prescribed by the Director containing the following information:
 - a. ~~If the applicant does business as an individual, the applicant’s name, address, and phone number;~~
 - b. ~~If the applicant does business as a partnership or a limited liability partnership, the names, addresses, and phone numbers of all partners with a designation of any limited partners;~~
 - c. ~~If the applicant does business as a corporation, limited liability company, an association, or any other organization, the names, addresses, and phone numbers of the president, vice president, if any, secretary, and treasurer, or the functional equivalent of these officers, the directors, the owners of 10% or more of the stock or beneficial interest, and owners of equity that creates controlling interest in the business;~~
 - d. ~~If the applicant does business as a corporation, a limited liability company or a limited liability partnership, evidence that the entity is in good standing with the Arizona Corporation Commission or the Secretary of State;~~

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- e a. The business applicant name, and if different, the trade name of the retailer's business premise, address, or of the physical location of the applicant's place of business, and the mailing address if it is different from the place of business, and phone number;
 - f b. The applicant's current transaction privilege tax license number issued pursuant to under A.R.S. §42-1305 § 42-5005 and federal taxpayer identification number recorded on Form W-9;
 - g c. Certification that the applicant has complied applicant's business location complies with the statutes and rules governing the Americans with Disabilities Act;
 - h d. Marketing and sales forecast information, on the forms and in the manner specified by the Lottery, sufficient for the Lottery to determine whether applicant is likely to be able to sell the minimum lottery tickets required by R19-3-203(A)(4). The information required includes the volume of expected sales, number of cash registers, hours of operation, products presently offered for sale, approximate average daily number of persons entering the applicant's business premises using at least 10 consecutive sample days within three months before the application date, and actual previous lottery sales history at that location or in comparable stores of the applicant, if any;
 - e. Evidence that the applicant's business products or services are not exclusively Lottery products or services concerning lotteries;
 - i f. Names, addresses, and phone numbers of 3 three business references for the applicant;
 - j g. Financial relationship and any outstanding debt with the state State of Arizona, or any of its government political subdivisions, or the United States government;
 - h. Evidence that the applicant is financially solvent. The evidence may include any one of the following:
 - i. Equity or unencumbered assets in real estate or personal property, other than goodwill and intellectual property, in an amount of \$100,000 or more;
 - ii. Evidence the applicant has established business credit, has a record of meeting its business debts as they became due for the last three consecutive years, and does not have outstanding legal actions, judgments, or tax liens;
 - iii. Personal guarantee in writing of applicant's Lottery account signed by a guarantor and the guarantor's spouse, if community property is being used to guarantee the account, or by the guarantor only, if guarantor provides proof that the guarantee is based on sole and separate property.
 - k i. Authorization agreement for electronic fund transfer with a valid bank account number from which any amount due the Lottery will be transferred Electronic Funds Transfer Authorization agreement showing a valid bank account number from which the Lottery will withdraw any amounts due; and
 - j. Name, case number, court designation, and type of action for any pending litigation or judgments for which the applicant may potentially be held financially responsible.
2. If the applicant does business as a sole proprietorship or partnership:
- a. The name, home address, and home phone number of each owner or partner including community property owner unless applicant provides proof that the business is sole property separate from the community;
 - b. Written authorization and tax identification number for the business entity and social security number of each applicant in order to obtain a credit search from a credit reporting agency; and
 - c. A completed authorized fingerprint card for the licensee. If any general partner is a corporation, a fingerprint card is required under subsection (A)(4).
3. If the applicant does business as a limited liability partnership ("LLP") or a limited liability company ("LLC"):
- a. The name, home address, and home phone number of each partner or member;
 - b. Written authorization and tax identification number for the business entity; and
 - c. A completed authorized fingerprint card for each partner or member.
4. If the applicant does business as a corporation:
- a. The name, corporate address, and corporate phone number of each officer and director, and the name, home address and home phone number of the responsible local manager and contact representative;
 - b. Written authorization and tax identification number to perform a credit search; and
 - c. A completed authorized fingerprint card for the appropriate responsible local manager who is the contact representative for the applicant's corporate location in Arizona.
5. If the Lottery licenses an applicant under subsection (A)(1)(h)(iii), the guarantor shall provide a written authorization to perform a credit search. If the guarantee is based on community property, the guarantor and guarantor's spouse shall provide written authorization for the Lottery to perform a credit search.
- 2 6. Submit a non-refundable an application fee of \$36.00. A licensee that is a corporation, limited liability company, an association, or any other organization, may renew its licenses for all locations on the same date in accordance with the provisions of subsection (4). If the applicant is a business with more than 4 one current licensed location, the application fee for that the new location shall be pro-rated at \$1.00 per month from the application date until the date the other licenses are due for renewal under R19-3-201(I)(2)(c).
- B. To Prerequisites to obtain or renew a license, a person shall submit to the Lottery evidence that the person is of good character and reputation. The Lottery may find that a person lacks good character and reputation if it determines that the per-**

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~~son has committed any act which, if committed or done by a licensed retailer, would be grounds for suspension or revocation of a license or that the person was named on any business license in this state or any other state that was suspended or revoked.~~

- ~~1. Evidence that the applicant is of good character and reputation. The Lottery may find that a person lacks good character and reputation if it determines that the person has committed any act which, if committed or done by a Lottery-licensed retailer, would be grounds for suspension or revocation of a license granted by the State of Arizona;~~
- ~~2. An applicant, a director or officer of a corporation, or member of a limited liability company, shall not have had a business license required by statute in Arizona or any other state suspended or revoked within the last 10 years;~~
- ~~3. An applicant, a director or officer of a corporation, or member of a limited liability company, shall not have had a Lottery license denied or revoked at the address and location of the applicant's place of business for reasons other than ADA non-compliance, and shall not have sold Lottery products without being licensed within one year of the person's date of application;~~
- ~~4. The applicant shall have demonstrated financial solvency based on the information provided in the application, credit search, or pending litigation, if any, or tax liens, if any;~~
- ~~5. Applicant demonstrates either sufficient average daily sales, as defined in R19-3-201(A)(1)(d), or the applicant presents evidence of a retailer with the same type of business with a similar population base that meets or exceeds the required minimum sale of Lottery tickets.~~

~~C. To obtain a license, a person shall not have had a Lottery license denied or revoked at the address and location of the applicant's place of business for reasons other than ADA non-compliance, and shall not have sold lottery products without being licensed within 1 year of the person's date of application.~~

~~DC. The Lottery shall not issue a license to a minor, a partnership in which 1 of the partners is a minor, or a corporation, association or other organization in which a corporate officer, member or manager is a minor, to an applicant if any of the following applies:~~

- ~~1. The applicant is a minor, a partnership or LLP in which one of the partners is a minor, an LLC in which one of the members is a minor, or a corporation in which a corporate officer, director, or manager of Lottery sales is a minor;~~
- ~~2. The organization is a sexually-oriented business as defined in A.R.S. §13-1422; or~~
- ~~3. The applicant provides deferred presentment services defined in A.R.S. § 6-1251.~~

~~ED. Residency requirement. To obtain a license, a person an applicant shall be one of the following:~~

- ~~1. A resident of Arizona;~~
- ~~2. A corporation incorporated in Arizona or authorized to do business in Arizona;~~
- ~~3. A limited liability company authorized to do business in Arizona in which a member or manager resides in Arizona;~~
- ~~4. A partnership in which at least 1 one of the general partners resides in Arizona; or~~
- ~~5. An unincorporated business authorized to do business in Arizona A limited liability partnership in which at least one of the partners resides in Arizona.~~

~~FE. Time-frame for licensure.~~

- ~~1. The Director shall finish an administrative completeness review within 15 days from the date of receipt of the application and fee prescribed in subsection (A).~~
 - ~~a. The Director shall issue a notice of administrative completeness to the applicant if no deficiencies are found in the application.~~
 - ~~b. If the application is incomplete or the fee is not submitted, the Director shall provide the applicant with a written notice that includes a comprehensive list of the missing information. The 15-day time-frame for completion of the administrative completeness review is suspended from the date the notice of incompleteness is sent until the applicant provides the Director with all missing information.~~
 - ~~c. If the Director does not provide the applicant with notice regarding administrative completeness, the application shall be deemed complete 15 days after receipt by the Director.~~
- ~~2. An applicant with an incomplete application shall submit all of the missing information within 20 days of service of the notice of incompleteness.~~
 - ~~a. If an applicant cannot submit all missing information within 20 days of service of the notice of incompleteness, the applicant may obtain an extension by submitting a written request, which documents the reasons the applicant is unable to meet the 20-day deadline, to the Director no later than 20 days from service of the notice of incompleteness.~~
 - ~~b. The Director shall review the request for an extension of the 20-day deadline and shall grant the request if the Director determines that an extension will enable the applicant to assemble and submit the missing information. An extension of the 20-day deadline shall be for no more than 20 days. The Director shall notify the applicant in writing of the decision to grant or deny the request for an extension. An applicant who requires an additional extension shall submit an additional written request in accordance with this subsection.~~
- ~~3. If an applicant fails to submit a complete application within the time allowed, the Director shall close the applicant's file. An applicant whose file is closed and who later wishes to obtain a license shall apply again in accordance with according to this Section.~~

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4. From the date on which the administrative completeness review of an application is finished, the Director shall complete a substantive review of the applicant's qualifications in no more than 75 days.
 - a. If an applicant is found to be ineligible, the Director shall issue a written notice of denial to the applicant.
 - b. If an applicant is found to be eligible, the Director shall issue a license to the applicant permitting the applicant to engage in business as a Lottery retailer under the terms of this Chapter.
 - c. If the Director finds deficiencies during the substantive review of an application, the Director shall issue a written request to the applicant for additional information.
 - d. The 75-day time-frame for substantive review is suspended from the date of a written request for additional information until the date that all information is received.
 - e. If the applicant and the Director mutually agree in writing, the 75-day substantive review time-frame may be extended once for no more than ~~20~~ 18 days.
5. For the purpose of A.R.S. § 41-1072 et seq., the Director establishes the time-frames for a license to sell Lottery tickets:
 - a. Administrative completeness review time-frame: 15 days.
 - b. Substantive review time-frame: 75 days.
 - c. Overall time-frame: 90 days.
6. If the Director does not provide the applicant with written notice granting or denying a license within the overall time-frame, the Director shall refund the applicant's application fee within 30 days after the expiration of the overall time-frame or the time-frame extension.
- ~~GE.~~ The Director may license a qualified applicant to sell any 1 or any combination of the Lottery's game products. The Director may require a licensee to sell 1 or more Lottery products as a condition of selling any other Lottery product. A Lottery licensee shall sell only the type of Lottery product authorized by the Lottery.
 1. The Director may license a qualified applicant to sell any one or any combination of the Lottery's game products.
 2. The Director may require a licensee to sell a minimum of four instant games with different game numbers. The Director may exempt a licensee from selling four different instant games if the licensee shows three consecutive months of double the minimum sales requirement in R19-3-203 (A)(4)(a).
 3. The Director may require a licensee to sell instant tickets as a condition of selling on-line tickets or shares.
- ~~HG.~~ A license issued under this Chapter shall be signed by the Director or the Director's designated representative ~~and by the licensee. A licensee shall not transfer a license and shall exhibit evidence of possessing the license upon demand.~~ A licensee shall post the license ~~number appearing on the license or a copy of the license~~ held by the licensee in a conspicuous place on the premises where the licensee sells lottery products. A violation of this subsection is grounds for disciplinary action ~~in accordance with~~ according to the provisions of R19-3-203.
- ~~IH.~~ As a condition of licensure, each licensee shall agree to release, indemnify, defend, and hold harmless, the Arizona Lottery, its directors, officers, and employees, from and against any and all liability, damage, cost, claim, loss, or expense, including, without limitation, reasonable attorney's fees and disbursements, resulting from or arising by reason of loss of use, temporary or permanent cessation of Lottery equipment, or terminal operations. This should not be construed in any way to ~~effect~~ affect the rights of the licensee to recover for losses caused by any ~~3rd~~ third party.
- ~~II.~~ Duration and renewal of license.
 1. A license issued under this Chapter shall expire ~~3~~ three years from the license issuance date by operation of law.
 2. A licensee may renew a license to sell ~~lottery~~ Lottery tickets by submitting to the Director a verified application for renewal of the current license on forms prescribed by the Director containing the information required in R19-3-201(A), (B), and ~~(E)~~ (D), accompanied by the required \$36 fee.
 - a. An application for renewal of a lottery license received by the Director or deposited in the United States mail postage prepaid on or before the renewal date, shall authorize the licensee to operate as a retailer until actual issuance of the renewal license.
 - b. The Director may refuse to renew a license ~~in accordance with~~ according to the provisions of ~~R19-3-204~~ R19-3-203.
 - c. ~~All licenses held by the same corporation, limited liability company, an association, or any other organization, shall be renewed on the same date. A licensee holding more than one license may elect to renew all licenses on the same date. If more than one license is renewed under this subsection, the application fee shall be pro-rated at \$1.00 per month from the license expiration date until the next renewal date of the other licenses held by the same licensee.~~
 3. A license issued under this Chapter that has expired by operation of law for failure to renew may be activated and renewed within ~~4~~ one year of its expiration by filing the required application of renewal and payment of the application renewal fee provided for in this Chapter. If a license has been suspended for ~~4~~ one or more years for failure to renew, a new application for license must be made and a new license issued ~~in accordance with~~ according to this Chapter.
 4. A license issued under this Chapter is subject to termination by the Director ~~in accordance with~~ according to the provisions of this Chapter before the expiration date.

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- J. Reportable Events.** A licensee shall report the following events to the Lottery in writing at least 15 days before the event or as otherwise specified in this Section:
1. Change in business location;
 2. Sale of ownership of the business;
 3. Death of a licensee within 15 days after the death occurs;
 4. Addition or removal of a partner in a partnership or a limited liability partnership;
 5. Substantial change in ownership of a non-public corporation with unencumbered assets of less than \$100,000 by a transfer of stock (equity) that removes a 10% or more shareholder or adds a 10% or more shareholder of a corporation;
 6. Merger or acquisition of the licensed entity;
 7. Addition or removal of a member in a limited liability company;
 8. Addition or removal of a controlling agent or designated corporate contact representative;
 9. Divorce or legal separation action filed by an individual licensee or licensee's spouse, if the licensed entity is a sole proprietorship or a partnership;
 10. Licensee or guarantor becomes insolvent;
 11. Licensee or guarantor files bankruptcy;
 12. Licensee is sued for a monetary judgment;
 13. Change in bank account from which the Lottery's electronic funds transfers are made;
 14. Change in mailing address or phone number of licensee or guarantor; or
 15. The applicant, a director or officer of a corporation, or a member of a limited liability company is charged with a felony, felony theft designated as a misdemeanor, misdemeanor theft, embezzlement, or a crime involving gambling.
- K. Change of Ownership or Business Location.** If a licensee plans to sell, terminate, substantially change the ownership of the licensee's business, or change the business location, the licensee shall notify the Director in writing of the date of sale, termination, substantial ownership change, or change of business location at least 15 days before the transaction. A license is not assignable or transferable. A license authorizes the entity described in the application to sell Lottery tickets only at the specific premise stated on the license.
1. The licensee shall surrender the license to the Director on the date of sale, termination, substantial ownership change, or business location change. If there is a change of ownership, business location, or for changes listed in subsections (J)(1) through (J)(7), the licensee shall:
 - a. Surrender the license to the Director on the date of the event;
 - b. Not sell any additional Lottery tickets;
 - c. Not allow the sale of Lottery products under a subcontract.
 2. A substantial change in ownership means a transfer of equity that creates a shift in the controlling interest of a licensee's business. The new owner shall apply for a license according to R19-3-201.

R19-3-202. Direct Sales by Lottery

The Lottery may sell ~~lottery~~ Lottery tickets at its main office, any branch it establishes in the state, or any ~~special promotional~~ event.

R19-3-203. Revocation, Suspension, or Renewal Denial of Retailer's License

- A.** A retailer's license may be revoked, suspended, or denied renewal by the Director for any of the following reasons:
1. The ~~retailer~~ licensee violates a provision of the ~~Act or this Chapter~~ laws of the State of Arizona, the United States, or the regulations of the Arizona Lottery Commission, which could be punished by jail time or imprisonment, revocation or suspension of a Lottery license, or involves moral turpitude;
 2. The ~~retailer~~ knowingly licensee offers to sell a Lottery ticket, sells a Lottery ticket or pays a prize on any winning Lottery ticket to a person less younger than 18 21 years old;
 3. The ~~retailer~~ licensee knowingly sells a Lottery ticket to a person using a public assistance voucher issued by any public entity or an electronic benefits transfer card issued by any public entity the Arizona Department of Economic Security to purchase the Lottery ticket or sells a Lottery ticket to a person during the same transaction in which the person uses a public assistance voucher issued by any public entity or an electronic benefits card issued by the Department of Economic Security to purchase any goods in addition to the Lottery ticket;
 4. The ~~retailer's~~ licensee's average weekly sales of tickets for the:
 - a. Instant games are less than \$250 tickets per week for the preceding quarterly period; and
 - b. On-line games are less than \$400 tickets per week for the preceding quarterly period; or
 - c. Instant games and on-line games combined are less than \$650 per week for the preceding quarterly period;
 5. The ~~retailer~~ licensee commits an act that impairs the ~~retailer's~~ licensee's reputation for honesty and integrity;
 6. The ~~retailer~~ licensee does not make purchase or redemption of ~~lottery~~ Lottery tickets convenient and readily accessible to the public;
 7. The ~~retailer~~ licensee provides to the Lottery a statement, representation, warranty, or certificate that the Lottery determines is false, incorrect, ~~or~~ incomplete, or omits relevant information;

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8. The ~~retailer~~ licensee has ~~2~~ two payments returned to the Lottery for insufficient funds in a 12-month period ~~which that~~ is caused by the retailer's actions;
 9. The ~~retailer~~ licensee becomes insolvent, unable or unwilling to pay its debts, or is declared bankrupt;
 10. The ~~retailer~~ licensee or an officer or controlling agent of the ~~retailer~~ licensee:
 - a. Is convicted of a felony, felony theft that is designated as a misdemeanor, or a crime involving gambling or fraudulent schemes and artifices; or
 - b. Is the subject of a civil order, judgment, or decree of a federal or state authority ~~related to~~ for misrepresentation, consumer fraud, or other fraud;
 11. Facts are discovered which, if known at the time the Lottery retailer's license was issued or renewed, would have been grounds to deny licensure;
 12. The ~~retailer~~ licensee adds a minor as an owner, partner, or officer of the business; ~~or~~
 13. The ~~retailer~~ licensee or an officer or employee of the ~~retailer~~ licensee sells a ticket or pays a prize to oneself, to any entity either wholly owned or partially owned by the licensee, or any entity with 10 percent or more of the same shareholders, partners, or members as the licensee;
 14. The licensee or an officer or employee of the licensee sells or exchanges any Lottery product for consideration other than U. S. currency, check, credit card, debit card or, if a player requests, a winning Lottery ticket;
 15. The licensee or an officer or employee of the licensee sells a Lottery ticket by telephone, mail, fax, on the Internet, or on premises other than the one listed on the Lottery retailer's license;
 16. The licensee or an officer or employee of the licensee sells an altered Lottery ticket, an expired Lottery ticket, or a Lottery ticket after the announced end of the game;
 17. The licensee fails to display the Americans with Disabilities Act Notice, Arizona Problem Gambling Helpline toll-free telephone number, Authorized Retailer decal, or license;
 18. The licensee fails to report a change event defined in R19-3-201(J); or
 19. The licensee fails to implement loss prevention procedures required in writing by the Lottery within 30 days of notice.
- B.** The Director may on the Director's own motion, and shall on an allegation of a violation of a provision of the laws of the State of Arizona, the regulations of the Arizona Lottery, or the written complaint of any person, investigate an act of a ~~retailer~~ licensee within 30 days after receiving the information. The Director may temporarily suspend a license under an emergency action, and impose specific conditions on a ~~retailer~~ licensee during the suspension ~~or~~ and commence an action to permanently revoke a license issued under this Article if the ~~retailer~~ licensee is found to have committed an act or omission listed in subsection (A).
- C.** The Lottery shall mail or hand-deliver a notice of action to the licensee to suspend or revoke a license. Written notice to the licensee is effective notice if it is sent or hand-delivered to the address in the application or the last address provided under R19-3-201(J).
- D.** Emergency action.
1. The Director may turn off a retailer's on-line terminal and suspend sales of Lottery tickets if the public welfare is threatened pending a proceeding for revocation, suspension, or denial of renewal, in the following circumstances:
 - a. The licensee's bank account has insufficient funds when the Lottery's regularly-scheduled electronic transfer of the licensee's account is returned by the bank as insufficient funds or closed account and the licensee does not immediately pay the insufficiency;
 - b. The licensee fails to implement loss prevention procedures required in writing by the Lottery within 30 days of notice;
 - c. The licensee, corporate officer, director, partner, LLC member, or location manager is charged with a felony or misdemeanor theft, embezzlement, or a crime involving gambling.
 2. A licensee who receives a Notice of Intent to Revoke a Retailer's License with a finding of emergency action shall:
 - a. Immediately cease all sales of Lottery products, and
 - b. Surrender the retailer's license and all other Lottery property and products upon request by the Director's representative.
 3. If the licensee fails to settle the financial account and surrender the license and all other Lottery property and products, the Director shall take steps allowed by law to secure payment and return of Lottery products and property.
 4. The Director shall notify the retailer in writing within five days of taking an emergency action that an expedited hearing or informal conference may be obtained before the Office of Administrative Hearings under R2-19-103 and R2-19-110.
- E.** Procedure for hearings. A ~~retailer~~ licensee may request a hearing before the Office of Administrative Hearings regarding a revocation, suspension, or license denial. ~~The hearing shall be conducted in accordance with A.R.S. Title 41, Chapter 6, Article 10. The procedures and requirements set forth in A.R.S. Title 41, Chapter 6, Article 10 apply to hearings under this subsection.~~
- F.** Procedure for filing an appeal ~~with the Commission~~ of a final administrative decision:

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1. ~~A person who wishes to appeal a final decision of the Director shall file an appeal with the Lottery Commission within 30 days of receipt of the Director's decision. The filed appeal shall contain the following: An appeal to the Lottery Commission is deemed an optional motion for rehearing.~~
 - a. ~~A Notice of Appeal to the Lottery Commission shall be filed within 10 days of receipt of the final administrative decision. The Notice shall contain:~~
 - ~~a i.~~ A copy of the Director's final administrative decision; and
 - ~~b ii.~~ The alleged factual or legal error in the final administrative decision ~~of the Director~~ from which the appeal is taken.
 - ~~2 b.~~ A person appealing the decision of the Director may file a written brief stating the position on the appeal within 30 days after receipt of the decision being appealed.
 - ~~c.~~ The Lottery may file a response brief within 15 days after receipt of the appellant's brief.
 - ~~3 d.~~ The Commission may rule based on the written briefs, or if requested, may provide for oral argument.
 - ~~4 e.~~ The Commission shall make its ruling on the appeal on the record.
 - ~~E f.~~ A final decision of the Lottery Commission is subject to judicial review under A.R.S., Title 41, Chapter 6, Article 40 Title 12, Chapter 7, Article 6.
2. A decision of the Director accepting, modifying, or rejecting the recommended decision of the Administrative Law Judge is a final administrative decision subject to judicial review under A.R.S., Title 12, Chapter 7, Article 6.

FG. Revocation of a retailer's license.

1. A ~~retailer licensee~~ who receives a notice of ~~license revocation~~ the final administrative decision revoking the retailer's license shall:
 - a. Immediately cease all sales of ~~lottery~~ Lottery products, and
 - b. Surrender the ~~retailer's~~ license and all other ~~lottery~~ Lottery property and products upon request ~~by~~ of the Director's representative.
2. If the ~~retailer licensee~~ fails to settle the financial account and surrender the license and all other ~~lottery~~ Lottery property and products, the Director ~~is authorized to~~ shall take all steps allowed by law to secure payment and the return of ~~lottery~~ Lottery products and property.

R19-3-204. Display of Point-of-sale and Promotional Material

- A.** Each ~~retailer licensee~~ shall prominently display and maintain a minimum of ~~3~~ three different point-of-sale ~~Lottery~~ promotional materials approved or provided by the Lottery. ~~Promotional materials may include, but are not limited to, change mats, mobiles, strip banners, table tents, brochures, or stickers.~~
- B.** A licensee shall prominently display the Americans with Disabilities Act Notice, Arizona Problem Gambling Helpline toll-free telephone number, and the Authorized Retailer decal.

R19-3-205. Instant Game Requirements

- A.** Distribution, return, and payment billing of instant tickets. The following describe the manner in which tickets for each The Lottery or its authorized representative shall distribute instant game tickets ~~will be distributed, accept returned instant game tickets, and bill instant game tickets sold to retailers licensees and payment made as follows:~~
 1. ~~The Lottery or its authorized representative shall distribute~~ Distribute to each ~~retailer licensee~~ the quantity of tickets on which the Lottery and the ~~retailer licensee~~ agree, based on the ~~retailer's licensee's~~ anticipated volume of sales.
 2. ~~The Lottery shall bill~~ Bill for instant ticket packs issued to a ~~retailer licensee~~ 45 days after a pack is activated or after 85% of winning tickets in the pack are validated, whichever occurs ~~1st~~ first.
 3. ~~Within 30 days before the announced end of each instant game the Lottery or its authorized representative shall collect unopened full packs of tickets in a retailer's possession. Initiate collection of full packs and partial packs of tickets in a licensee's possession when a game ends. The Lottery shall credit to the retailer, within 60 days following the announced end of the instant game, the net dollar value of any unopened full packs of tickets collected by the Lottery. All opened partial packs of tickets shall remain in the retailer's possession and may be sold before the end of the 180-day redemption period following the announced end of game.~~
 4. Credit to the licensee, in the billing period following the receipt of the Lottery-authorized returned tickets, the net dollar value of any unopened full packs and partial packs of tickets the Lottery receives from the licensee not more than 30 days after the announced end of game.
 45. ~~The Lottery may collect~~ Collect full and opened partial packs of tickets during a game if the Lottery and the ~~retailer licensee~~ determine that the licensee's sales for a specific game are minimal (for example, no sales activity within a 2-week period) and after the announced end of a game if the instant game is a seasonal, holiday, or event-related game.
- B.** The Lottery shall announce, within three working days of the Director's written approval, the end of an instant game. The Director shall end an instant game when:
 1. The last top prize has been claimed;
 2. There is an actual or perceived threat to the game's integrity or security;
 3. A particular percentage of the game's inventory has been invoiced;
 4. The designated sales period has expired; or

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5. At the discretion of the Director.
- C.** A licensee shall pay for instant game ticket sales in the following manner:
1. Pay to the Lottery each Friday, by an electronic transfer of funds, the amount due from the sale of its instant game Lottery tickets for the seven-day period ending at the close of business on the previous Saturday. The amount due is the licensee's instant game tickets calculated according to subsection (A)(2) minus any promotion tickets, returned tickets, prize winnings paid out by the licensee, the licensee's sales commission and plus or minus any accounting or prize adjustments.
 5. A retailer shall follow a schedule established by the Lottery for payment of all amounts due according to a statement or invoice provided by the Lottery. The retailer shall pay the amount due to the Lottery by an electronic transfer of funds.
 - 6 2. A ~~retailer~~ licensee shall deposit funds in a timely manner into a bank account from which an electronic transfer will be made to the Lottery.
 - a. The ~~retailer~~ licensee shall provide the Lottery with an electronic funds transfer authorization with showing a valid bank account number from which the amounts due the Lottery will be transferred; and
 - b. The ~~retailer~~ licensee shall notify the Lottery of any bank account changes 15 days before the effective date of the change.
 - 7 3. If a ~~retailer's~~ licensee's payment is returned to the Lottery for insufficient funds or any other reason, the ~~retailer~~ licensee shall deliver a certified check, cashier's check, or money order or make a direct deposit to the Lottery's bank account before the next payment is due within 24 hours of notification. Additionally, if the ~~retailer's~~ licensee's payment is returned to the Lottery,
 - a. The Director may require the ~~retailer~~ licensee to pay the amount due in the form of a cashier's check, money order, sight draft or certified check at the time of each future delivery of tickets;
 - b. The Director may require the payment of each future delivery of tickets upon activation;
 - c. The Director may summarily inactivate the ~~retailer's~~ licensee's instant ticket validation terminal;
 - d. The Director may pick up the ~~retailer's~~ licensee's current inventory of tickets and withhold further delivery of tickets; and
 - e. The Director may revoke, suspend, or deny renewal of the ~~retailer's~~ licensee's license in accordance with according to R19-3-203(A)(7) R19-3-203(A).
- BD.** Ticket prize validation and payment requirements. A ~~retailer~~ licensee shall provide prize winner validation and payment services to any Lottery claimant regardless of where the a winning ticket was purchased. A licensee may pay all winner prizes, up to and including \$599, provided that the ticket is validated as specified in R19-3-705. The ~~retailer~~ licensee shall pay all winner prizes, up to and including \$599 \$100, provided that if the ticket is validated as specified in R19-3-705. Winner prizes may be paid by cash, business check, or money order, or if the prize winner requests, by Lottery tickets.
- E.** A licensee shall only validate instant tickets using its authorized instant validation terminal in accordance with the Act and this Chapter.
1. Instant validation terminal location.
 - a. A licensee shall locate the instant validation terminal at a site approved by the Lottery within the licensee's place of business. The licensee shall not move the terminal from that site without prior approval from the Lottery.
 - b. A licensee shall ensure that the electrical service and data communication services to the terminal location are installed according to the specifications established by the Lottery. The licensee shall timely pay monthly charges for the electrical and telephone services.
 2. Instant validation terminal conversion.
 - a. If the Lottery modifies its on-line or instant gaming system, it may:
 - i. Change terminals, equipment, or accessories; or
 - ii. Convert to another on-line or instant gaming system.
 - b. A licensee shall assist the Lottery to the extent practicable to accomplish a modification of the on-line or instant gaming system in a timely and economical fashion.
 3. Instant validation terminal operation. A licensee shall have its instant validation terminal available for the validation and cashing of instant game Lottery tickets at a minimum of 14 continuous hours each day if the Lottery's system is active and the licensee's business is open.
 4. The Lottery shall not be liable for damages of any kind due to failure of any Lottery instant validation terminal interruption or termination of validation terminal operations.
 5. Instant validation terminal care. A licensee shall at all times:
 - a. Operate the instant validation terminal, associated equipment, and accessories only in the ordinary course of its instant game Lottery business and only according to the requirements established by the Lottery; and
 - b. Exercise diligence and care to prevent failures and malfunctions of, and accidents to the terminal and other property of the Lottery, or property of on-line and instant game contractors.
 6. Instant validation terminal maintenance. A licensee shall:
 - a. Maintain the instant validation terminal, associated equipment, and accessories in a clean, orderly, and good con-

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dition:

- b. Replace ribbons and paper stock in the instant validation terminal as necessary; and
- c. Minimize terminal downtime by:
 - i. Notifying the Lottery or its on-line or instant game contractor immediately of any terminal failure, malfunction, damage, or accident; and
 - ii. Making the terminal available for repair, adjustment, or replacement at all times during the licensee's regular business hours.

7. Instant validation terminal supplies. A licensee shall:

- a. Order and use terminal supplies exclusively from the Lottery or its designated contractor. The Lottery shall furnish validation terminal supplies, at no cost, to the licensee; and
- b. Maintain a sufficient inventory of validation terminal Lottery supplies to avoid an out-of-stock situation.

8. Licensee training. A licensee shall:

- a. Participate in training provided by the Lottery in the operation of instant validation terminals and sale of Lottery products, which may take place at a licensee's place of business;
- b. Ensure that all employees selling Lottery products or operating Lottery instant validation terminals are properly trained in these areas and have access to all materials provided by the Lottery relating to the sales and promotion of Lottery products and the operation of Lottery equipment;
- c. Be responsible for:
 - i. Any compensation payable to employees for participation in Lottery training courses and instruction; and
 - ii. All other costs associated with employee training; and
- d. Provide all employees operating Lottery equipment with copies of the procedures manuals, bulletins, and technical materials furnished to the licensee by the Lottery or its contractors.

~~EF.~~ Retailer's Licensee's compensation. The Lottery shall pay a ~~retailer~~ licensee a commission of ~~6-1/2%~~ six and one-half percent of the price of each instant lottery ticket it sells. The Lottery shall not pay a licensee a commission on sales transactions that are prohibited by any state or federal statute or rule.

~~DG.~~ Instant ticket sales. All instant game ticket sales are final and the Lottery will not accept ticket returns except as prescribed in subsections (A)(3) (A)(4).

- 1. The money collected from the sale of Lottery tickets are trust monies required to be collected for the benefit of the State and shall be paid to the Lottery according to subsection (C).
- 2. The licensee shall sell instant game tickets in numeric order starting with ticket 000.
- 3. All instant game ticket sales are final and the Lottery will not accept ticket returns except as prescribed in subsection (A)(3).
- 4. The retailer shall not sell an instant game ticket after the announced end-of-game.

~~EH.~~ In addition to the compensation specified in subsection ~~(E)~~ (F), the Lottery shall pay an incentive of up to ~~1/2%~~ one-half percent on the price of each ticket sold to licensees who meet specifications established in writing by the Director. The written specifications shall be provided to the retailer before the incentive program begins.

~~FI.~~ Unaccounted and stolen tickets.

- 1. Tickets unaccounted for by a ~~retailer~~ licensee shall be the property of the ~~retailer~~ licensee.
- 2. The ~~retailer~~ licensee shall report stolen tickets to the local law enforcement agency within ~~1~~ one hour of the theft or when discovered. In addition, the ~~retailer~~ licensee shall report the ~~event~~ theft by telephone to the Lottery's Security Division within ~~1/2~~ one-half hour of law enforcement notification and provide the Lottery with a copy of the written police report. The Lottery shall issue credit for stolen tickets in an amount equal to 50% of the retailer's purchase price for the instant tickets before retail sale less any 3rd-party reimbursement. The ~~retailer~~ licensee shall cooperate in any investigation and prosecution of the theft.
- a. The licensee's insurance is the loss payee. If there is insufficient insurance to pay for the licensee's loss, the Lottery shall issue credit for stolen tickets that have been activated for sale. The credit shall be in an amount equal to 50% of the licensee's purchase price for the instant tickets less any third-party reimbursement. The Lottery shall not credit instant tickets reported as stolen that are in an "issued to retailer" status because the tickets are not activated for sale and are not billed to the retailer. The ~~retailer~~ licensee shall sign an affidavit stating that the listed tickets were stolen and whether a claim for reimbursement is being or will be made with a ~~3rd~~ third party for the amount covered by the available Arizona Lottery credit. If the ~~retailer~~ licensee obtains reimbursement for the stolen tickets from a source other than the Lottery, the Lottery credit will be reduced by the amount of the ~~3rd-party~~ third-party reimbursement.
- b. The Lottery shall not issue a credit for stolen tickets if the Lottery finds the licensee was negligent or did not enforce reasonable loss-prevention procedures to protect tickets, ticket processing, and ticket accounting.
- ~~b c.~~ Each ~~retailer~~ licensee location is limited to no more than ~~2~~ two stolen ticket ~~credits~~ credit requests within ~~36 months of the date of the last theft for which a credit is requested~~ any 36 month period.
- 3. If the claimed ticket for a prize is reported stolen or unaccounted for by a ~~retailer~~ licensee, the Lottery shall hold the prize money in escrow pending the findings of an investigation by an appropriate law enforcement agency.

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- J.** A licensee may sell instant tickets using its authorized instant ticket vending machine according to the Act and this Chapter.
1. A licensee shall establish safeguards to ensure that instant ticket vending machines are not operated by persons under the legal age to purchase Lottery tickets.
 2. The instant ticket vending machine shall be placed in an area of the store that:
 - a. Is visible to store personnel and other customers; and
 - b. Is easily accessible to players.
 3. The licensee shall maintain an adequate supply of instant tickets in all bins to minimize out-of-stock conditions.
- R19-3-206. On-line Game Requirements**
- A.** Ticket sales requirements. Money collected from the sale of Lottery tickets are trust monies required to be collected for the benefit of the State and shall be paid to the Lottery according to subsection (M). A retailer licensee selling On-line on-line Lottery games shall issue On-line on-line Lottery tickets using its authorized terminal in accordance with according to the Act and this Chapter.
- ~~1. If a ticket is voided as prescribed in R19-3-401(C)(3), the retailer shall refund the ticket price to the ticket holder.~~
 - 2 1. If a retailer licensee accepts a returned ticket from a player or generates a ticket that is refused by the player and the retailer licensee does not void or resell the ticket, the Lottery shall deem the ticket to be owned by the retailer licensee.
 - 3 2. A retailer licensee shall not sell a ticket or combination of tickets to any person or entity that could guarantee the purchaser a win. A retailer shall not devote more than 15 minutes of sales in any hour to a purchase by any single player.
 3. A licensee shall not make any representation to a player regarding a likelihood to win, a guaranteed return on a percentage of purchases, or better chances or odds of winning.
 4. A licensee shall not devote more than 15 consecutive minutes of sales to a purchase by any single player if other customers are waiting to make a purchase.
 - 4 5. A retailer licensee shall not permit the use of facsimiles or copies of selection slips, or other materials that are inserted into a terminal's selection slip reader that are not printed or approved by the Lottery. Plays may be entered manually only by using the lottery Lottery terminal keypad or touch screen or by using a selection slip provided by the Lottery and hand-marked by the player.
- B.** Ticket prize validation and payment requirements. A retailer licensee shall provide prize winner validation and payment services to any Lottery claimant regardless of where the ticket was purchased. If all the ticket validation criteria in R19-3-401(H)(I) R19-3-406 and R19-3-407 are satisfied and a proper validation ticket, which is an authorization to pay, is issued by the terminal, the retailer shall licensee may pay a winner prize, up to and including \$599. A licensee shall pay all winner prizes up to and including \$100. Winner prizes may be paid by cash, business check, or money order, or if the prize winner requests, by Lottery tickets.
- C.** Terminal location.
1. A retailer licensee shall locate an on-line Lottery terminal at a site approved by the Lottery within the retailer's licensee's place of business and shall not move the terminal from that site without prior approval from the Lottery.
 2. A retailer licensee shall ensure that the electrical service and telephone data communication services to the terminal location are installed in accordance with according to the specifications established by the Lottery. The retailer licensee shall ensure also that timely pay monthly payments charges for the electrical services are made. The Lottery may assess the retailer licensee for monthly data line communication charges if retailer licensee sales of Lottery products are less than the required minimums established in R19-3-203.
 3. If any action by the retailer licensee makes it necessary to place an order with the providing telephone company to correct or relocate telephone data communication service after the terminal is initially installed, the retailer licensee shall pay for the charges associated costs incurred. The Lottery shall provide to the retailer licensee a statement of charges costs and a copy of the telephone data communication bill associated with the charges costs.
- D.** Terminal conversion.
1. If the Lottery deems it necessary, the Lottery shall modify its on-line Lottery system by:
 - a. Changing terminals, equipment, or accessories; or
 - b. Converting to another on-line system.
 2. A retailer licensee shall assist the Lottery to the extent reasonable and practical to accomplish a modification of the on-line Lottery System system in a timely and economical fashion.
- E.** Terminal operation. A retailer licensee shall have its on-line Lottery terminal available for the sale, validation, cancellation, and cashing of on-line Lottery tickets at a minimum of 14 continuous hours each day if the Lottery's on-line system is active and the retailer's licensee's business is open.
- F.** The Arizona Lottery shall not be liable for damages of any kind due to failure of any on-line lottery terminal interruption or termination of on-line terminal operations.
- G.** Terminal care. A retailer licensee shall at all times:
1. Operate the on-line terminal, associated equipment, and accessories only in the ordinary course of its on-line Lottery business and only in accordance with according to the requirements established by the Lottery; and

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2. Exercise diligence and care to prevent failures and malfunctions of, and accidents to the terminal and other property of the Lottery or property of on-line contractors.
- H. Terminal maintenance. A retailer licensee shall:
 1. ~~Keep~~ Maintain the on-line Lottery terminal, associated equipment, and accessories clean, orderly, and in good condition;
 2. Replace ribbons and ticket stock in the terminal as required necessary; and
 3. Minimize terminal downtime by:
 - a. Notifying the Lottery or its on-line contractor immediately of any terminal failure, malfunction, damage, or accident; and
 - b. Making the terminal available for repair, adjustment, or replacement at all times during the retailer's licensee's regular business hours.
- I. Terminal supplies. A retailer licensee shall:
 1. Order and use on-line Lottery supplies, including but not limited to, ribbons, ticket stock, and selection slips exclusively from the Lottery or its designated contractors; The Lottery shall furnish on-line supplies, at no cost, to the retailer; and
 2. Maintain a sufficient inventory of on-line Lottery supplies to avoid an out-of-stock situation. The Lottery shall furnish on-line supplies, at no cost, to the retailer.
- J. Retailer Licensee training. A retailer licensee shall:
 1. Participate in training provided by the Lottery in the operation of on-line terminals and sale of Lottery products, which may take place at a retailer's licensee's place of business;
 2. Ensure that all employees selling Lottery products or operating Lottery on-line terminals are properly trained in these areas and have access to all materials provided by the Lottery relating to the sales and promotion of Lottery products and the operation of Lottery equipment;
 3. Be responsible for:
 - a. Any compensation payable to employees for participation in Lottery training courses and instruction; and
 - b. All other costs associated with employee training; and
 4. Provide all employees operating on-line Lottery equipment with copies of the procedures manuals, bulletins, and technical materials ~~that are~~ furnished to the retailer licensee by the Lottery or its on-line contractor.
- K. Retailer Licensee compensation. The Lottery shall pay a retailer licensee a commission of ~~6 1/2%~~ six and one-half percent of the price of each on-line ticket it sells. ~~The Lottery shall not consider a voided ticket a sale.~~ The Lottery shall not pay a retailer licensee a commission on sales transactions that are prohibited by any state or federal statute or rule.
- L. In addition to the compensation specified in subsection (K), the Lottery shall pay an incentive of up to ~~1/2%~~ one-half percent on the price of each ticket sold to retailers a licensee who meet specifications established in writing by the Director. The written specifications shall be provided to the retailer licensee before the incentive program begins.
- M. A retailer licensee shall pay for on-line ticket sales in the following manner:
 1. Pay to the Lottery each Friday, by an electronic funds transfer, the amount due from the sale of its on-line Lottery tickets for the ~~7-day~~ seven-day period ending at the close of business on the previous Saturday. The amount due means the retailer's gross on-line sales revenue, minus any ~~voided tickets~~, promotion tickets, prize winnings paid out by the retailer licensee, and the retailer's licensee's sales commission and plus or minus any accounting or prize adjustments.
 2. ~~Pay the amount due to the Lottery by an electronic transfer of funds.~~ The retailer licensee shall deposit funds in a timely manner into a bank account from which the electronic funds transfer will be made to the Lottery.
 - a. The retailer licensee shall provide the Lottery with an electronic funds transfer authorization showing a valid bank account number from which the amounts due the Lottery will be transferred; and
 - b. The retailer licensee shall notify the Lottery of any bank account changes 15 days before the effective date of the change.
 3. If a retailer's licensee's payment is returned to the Lottery for insufficient funds or any other reason, the retailer licensee shall deliver a certified check, cashier's check, or money order, or make a direct deposit to the Lottery's bank account ~~before the next payment is due~~ within 24 hours of notification. Additionally, if the retailer's licensee's payment is returned to the Lottery,
 - a. The Director may summarily inactivate the retailer's licensee's on-line Lottery terminal; and
 - b. The Director may revoke, suspend, or deny renewal of the retailer's licensee's license ~~in accordance with R19-3-203(A)(7)~~ according to R19-3-203.

R19-3-207. Compliance Investigations

- A. A retailer licensee shall comply with all provisions of the Act and this Chapter. The Lottery may conduct inspections to verify compliance and, if necessary, order an audit or investigation of the business for verification.
- B. Investigation of premises. A retailer licensee shall allow investigations during the retailer's licensee's regular business hours by authorized Lottery investigators to determine whether the retailer licensee is complying with the provisions of the Act and this Chapter.

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- C. A ~~retailer licensee~~ shall keep all invoices, records, bills and other papers and documents relating to the purchase, sale, and validation of Lottery products that are kept in the normal course of business for tax purposes for ~~5~~ five years. These records and papers shall be easily accessible to the Lottery-authorized investigator for examination or audit. The licensee may use Non-paper non-paper types of storage, such as microfiche, may be used. and the licensee may store Records may be stored records at a central location.

R19-3-208. Penalties

- A. The Director shall assess a civil penalty against a ~~retailer licensee~~ for any of the following acts of the ~~retailer licensee~~:
1. ~~Until June 1, 2003, offering to sell or selling a lottery ticket or share to any person who is less than 18 years of age;~~
 - 2 1. ~~Beginning on June 1, 2003, offering~~ Offering to sell or selling a lottery ticket or share to any person who is less than 21 years of age;
 - 3 2. Selling a lottery ticket or share to a person who uses either a public assistance voucher issued by any public entity or an electronic benefits transfer card issued by the Arizona Department of Economic Security to purchase the ticket or share; or
 - 4 3. Selling a lottery ticket or share during the same transaction in which a person uses either a public assistance voucher issued by any public entity or an electronic benefits transfer card issued by the Arizona Department of Economic Security to purchase any goods in addition to the lottery ticket or share.
- B. The Director shall on the written complaint of any person, and shall upon receipt of information indicating that a ~~retailer licensee~~ has committed an act listed in subsection (A), investigate an act of the ~~retailer licensee~~ listed in subsection (A). The Director shall give notice to the ~~retailer licensee~~ as provided in A.R.S. §§ 41-1092.03 and 41-1092.04 of imposition of a civil penalty if the Director finds that the retailer has committed an act listed in subsection (A). The civil penalty for an act listed in subsection (A) is:
1. In an amount up to \$300 for the first violation within a 12-month period;
 2. In an amount more than \$300 and up to \$500 for the second violation within a 12-month period; and
 3. In an amount more than \$500 and up to \$1,000 for the third violation within a 12-month period.
- C. A ~~retailer licensee~~ against whom a penalty is assessed shall pay the penalty to the Lottery by the 31st day after the ~~retailer licensee~~ receives notice of imposition of the civil penalty, if the ~~retailer licensee~~ does not request a hearing as provided in subsection (D).
- D. A ~~retailer licensee~~ may request a hearing regarding imposition of a civil penalty. The procedures and requirements set forth in A.R.S. Title 41, Chapter 6, Article 10 apply to hearings under this subsection.
- E. A decision of the Director accepting, modifying or rejecting the recommended decision of the Administrative Law Judge is a final administrative decision subject to judicial review under A.R.S. Title 12, Chapter 7, Article 6.
1. If the ~~retailer licensee~~ decides not to seek judicial review of the Director's final administrative decision, the ~~retailer licensee~~ shall pay the civil penalty to the Lottery by the 36th day after the ~~retailer licensee~~ receives the Director's decision.
 2. If the ~~retailer licensee~~ decides to seek judicial review of the Director's final administrative decision, the ~~retailer licensee~~ shall pay the civil penalty to the Lottery by the 36th day after the date of the Superior Court's decision.
 3. If the ~~retailer licensee~~ decides to appeal the Superior Court's decision, the ~~retailer licensee~~ shall pay the civil penalty to the Lottery by the 36th day after the date of the decision on appeal.
 4. A ~~retailer licensee~~ shall pay interest at the rate provided in A.R.S. § 44-1201 from the date final judgment assessing a civil penalty is entered until satisfaction of the judgment.

R19-3-209. Notice and Service

Service shall be deemed made by the Lottery for any notice, decision, order, subpoena, or other process when the document or a copy is delivered to the licensee, guarantor, or the attorney of record, or is deposited as certified mail in the United States Postal Service, addressed to the licensee or guarantor at the address listed on the application for license or as noticed as a change event under R19-3-201(J).

Arizona Administrative Register / Secretary of State
Notices of Final Rulemaking

Exhibit A

AMENDED

EXECUTIVE ORDER

No. 81- 2

RECEIPT OF CRIMINAL HISTORY RECORD
INFORMATION - ARIZONA STATE LOTTERY COMMISSION

WHEREAS, the Arizona State Lottery Commission has statutory authority under Title 5, Arizona Revised Statutes, to inquire into character and past criminal conduct as essential requisites in evaluating the fitness of prospective employees and licensees; and

WHEREAS, the Department of Public Safety maintains a Criminal Identification Section pursuant to A.R.S. §41-1750 for the purpose of procuring and maintaining information concerning arrests and convictions of persons for public offenses in Arizona; and

WHEREAS, the Criminal Identification Section is authorized under the provisions of A.R.S. §41-1750 (B) (3) to cooperate with criminal identification bureaus in other states and the federal government in the exchange of information pertinent to violators of the law; and

WHEREAS, the Criminal Identification Section is authorized pursuant to A.R.S. §41-1750 (B) (7) and (8) to provide criminal history record information to noncriminal justice licensing and regulatory agencies of the state for the purpose of evaluating the fitness of prospective employees and licensees; and

WHEREAS, the Arizona State Lottery is a noncriminal justice licensing and regulatory agency of the state; and

WHEREAS, noncriminal justice agencies of the state may receive criminal history record information from the Department of Public Safety Criminal Identification Section pursuant to A.R.S. §41-1750 (G) only by specific authority granted to that agency by statutes, ordinance, or executive order, and subject to rules and regulations of the Department of Public Safety.

NOW, THEREFORE, I, Bruce Babbitt, Governor of the State of Arizona, under authority provided by §41-1750 (G) hereby authorize the Criminal Identification Section of the Department of Public Safety to provide and the Arizona State Lottery to receive criminal history record information for purposes of employment and licensing in accordance with those rules and regulations issued by the Department of Public Safety.

IN WITNESS WHEREOF, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Arizona



A handwritten signature in dark ink, appearing to read "Bruce Babbitt".

GOVERNOR

DONE at the Capitol in Phoenix on this ninth day of April in the Year of Our Lord One Thousand Nine Hundred and Eighty-one and of the Independence of the United States of America the Two Hundred and Fifth.

ATTEST:

A handwritten signature in dark ink, appearing to read "James H. ...".
Secretary of State